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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~623~~ 39

RUSSIAN VOLUNTEER FLEET, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED FEBRUARY 3, 1930

CERTIORARI GRANTED APRIL 21, 1930

(34,754)

(34,754)

SUPREME COURT OF THE UNITED STATES

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 623

RUSSIAN VOLUNTEER FLEET, Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

May it please the Court:

The petition of the Russian Volunteer Fleet respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

This suit was brought in the Court of Claims by the Petitioner, a corporation organized and existing under the laws of Russia, against the United States to recover the value of two contracts for ships requisitioned by the President on August 16, 1917. These contracts, of which Petitioner was then owner, were requisitioned under the provisions of Public Act No. 23 of the 65th Congress, House Resolutions No. 2971 entitled "An act making appropriations to supply urgent deficiencies in appropriations of the military and naval establishments etc." approved on June 15, 1917, (40 Stat at L. 182) and this suit was filed by your Petitioner pursuant to the express authority contained in that Act. The Court of Claims dismissed the suit for want of jurisdiction before any testimony was taken, notwithstanding the express provision in the Act of Congress that any corporation whose property should be appropriated under the terms of the Act, should be [fol 2] entitled to sue the United States in the Court of Claims to recover just compensation therefor. The decision was based solely on the ground that the Petitioner is a citi-

zen of the State of Russia, with the present Government of which the Government of the United States has not established diplomatic relations. The ultimate question involved in this case may accordingly be stated thus:

May the Government of the United States take the private property of a Russian citizen, refuse to pay for it, and successfully resist suit in the Court of Claims on the ground that the Soviet Government is not "recognized" by the Department of State.

The facts of record are as follows:

Petitioner has been since 1917 and is now a corporation organized under the laws of Russia (R., p. 1).* On August 16, 1917, the United States Shipping Board Emergency Fleet Corporation requisitioned from the Petitioner contracts for the building of two vessels then under construction at the yards of the Standard Shipbuilding Company in New York of which contracts the Petitioner was then owner (R. pp. 4-10). The vessels were taken by virtue of the powers conferred upon the President by the Urgent Deficiencies Appropriation Act of June 15, 1917 (hereinbefore cited), and by him delegated to the Fleet Corporation by executive order dated July 11, 1917 (R., pp. 4-5). That Act contained the following provision (R., pp. 2-4):

"The President is hereby authorized and empowered, within the limits of the amounts herein authorized * * *

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in [fol. 3] which ships or materials are built or produced to place at the disposal of the United States the whole of any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

[*References to side folios of Record.]

(e) To produce, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship. * * *

Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sums as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: Provided, that all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation or contractor.

The word 'ship' shall include any boat, vessel, or submarine and the parts thereof."

[fol. 4] Although the Fleet Corporation at the time of requisition, recognized the right of your Petitioner to compensation (R., p. 7) and has since valued that right at the sum of $1,412,532.35 as of March 5, 1920, (R. pp. 10-11), it has refused to make any payment whatsoever to the Petitioner.

The original petition in this case was filed with the Court of Claims on the 23rd day of March, 1921. (R. p. 1). By leave of court an amended petition was filed on the 16th day of October, 1924, which contains a full statement of the Petitioner's claim (R., pp. 1-39). Thereafter the Petitioner moved for the issuance of commissions to take testimony on interrogatories for the purpose of proving the allegation of the amended petition that a citizen of the United States has the right to sue the Government of Russia in the courts of that State upon a claim such as the present (R., p. 39). Upon objection made by the United States, this motion was overruled (R., p. 39). Thereupon the Petitioner served notice upon the United States of its intention to take depositions (R., pp. 39 etc.). To this the United States replied by a motion to quash the notice on the ground that the Court of Claims was without jurisdiction to entertain this suit (R., p. 40). This motion was argued and thereafter the judgment of the Court was entered dismissing the entire proceedings for want of jurisdiction (R., p. 44). Thereafter Petitioner filed a motion for new trial which was overruled (R., p. 40).

The Court filed an opinion in support of its order, in which the dismissal of the suit was based on the following propositions (R., pp. 41, etc.):

(1) That the right of the Petitioner to bring this suit is limited by Section 155 of the Judicial Code (U.S.C. Title 28, Sec. 261), which provides as follows:

[fol. 5] "Aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

(2) That the Courts of the United States cannot admit proof of the existence of any foreign Government which the Government of the United States has not "recognized" (i.e., with which the Department of State has not established diplomatic relations).

(3) That in any event the privilege of suing the United States under Sec. 155 is reserved to citizens of states, the

existing Governments of which, are "recognized" by the Department of State.

While the United States advanced certain other contentions in argument below, the Court of Claims did not refer to them in its opinion. It will thus be seen that the ruling below, unless reversed by this Court, establishes the general proposition that a citizen of a foreign state which accords a citizen of the United States the right to sue that state or government in its courts, may not sue the United States for private property taken by the United States unless diplomatic relations have been established between that country and the United States, notwithstanding the express provision of an Act of Congress, properly construed, authorizes such a suit.

B

Reasons Relied on for the Allowance of the Writ

1. Because the decision of the Court of Claims, if not reversed, establishes the power of the United States to take the property of the Petitioner without paying for it, [fol. 6] as the Petitioner is held to be without remedy in the Courts of the United States, and *ex hypothesi* is without remedy through diplomatic channels.

2. Because the decision of the Court of Claims, if not reversed, deprives the citizens of any state, the existing government of which has not established diplomatic relations with the United States, of all remedy against acts of spoliation by the United States.

3. Because this case involves a question as to the application of the provisions of Section 155 of the Judicial Code (limiting the right of aliens to sue the United States in the Court of Claims) to suits under the provisions of the Urgent Deficiencies Appropriation Act of June 15, 1917. This act expressly authorized suit to be filed by any person against the United States in the Court of Claims to recover just compensation for property taken under that act.

4. Because this case involves a further question of statutory construction as to the extent of the right of aliens to sue the United States in the Court of Claims under the

provisions of Section 155 of the Judicial Code, which is of great practical importance and which has not heretofore been passed upon by this Court.

5. Because this case involves novel and important questions as to the construction of two acts of Congress which have not heretofore been passed upon by this Court.

6. Because the decision of the Court of Claims has read into the provisions of Section 155 of the Judicial Code a limitation not contained in the statute.

7. Because the decision of the Court of Claims in effect deprives of all remedy the citizens of friendly foreign governments whose property is appropriated by the United States in time of war, in contravention of the accepted principles of the law of nations.

[fols. 7 & 8] 8. Because the effect of the decision of the Court of Claims may be to deprive citizens of the United States of reciprocal remedies now available to them in the courts of governments not recognized by the Government of the United States, such as, for example, now exist in the courts of Russia.

9. Because this case involves several points of general municipal law, and of public international law, which were decided by the Court below in a manner in conflict with the weight of authority, with the decisions of other Federal Courts, and with the great weight of scholarly opinion.

Wherefore your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims of the United States, commanding that Court to certify and to send to this Court for its review and determination, on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on this docket No. —. The Russian Volunteer Fleet, Appellant, against The United States, Appellee, and that the said judgment of the Court of Claims of the United States may be reversed by this Honorable Court, and that your Petitioner may have such other and

further relief in the premises, as this Honorable Court may seem meet and just.

And your Petitioner will ever pray.

Russian Volunteer Fleet, by Charles Recht, Horace S. Whitman, Wm. L. Marbury, Jr., Counsel for Petitioner.

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. A-69

RUSSIAN VOLUNTEER FLEET

v.

THE UNITES STATES

I. HISTORY OF PROCEEDINGS

On March 23, 1921, the original petition in this case was filed by Victor E. Gartz, Esq., attorney of record.

On April 9, 1923, on motion made therefor, Charles Recht, Esq., was substituted as attorney of record.

On October 16, 1924, on motion made therefor, the plaintiff filed an amended petition.

Said amended petition is as follows:

II. AMENDED PETITION—Filed Oct. 16, 1924

To the Honorable the Judges of the Court of Claims:

The petition of the Russian Volunteer Fleet Corporation respectfully shows:

1. Your petitioner, Russian Volunteer Fleet, claimant herein, is a corporation duly organized under, and by virtue of, the Laws of Russia.

2. On or about the 13th day of January, 1917, your petitioner became the assignee for value of a certain contract for the construction of one Standard steel cargo steamship of approximately 7300 tons deadweight, which contract was

entered into on the 21st day of July, 1916, between the Standard Shipbuilding Corporation of New York, N. Y., U. S. A., a corporation organized under the Laws of the State of New York, and one Christian Haaland of Haugesund, Norway. Copy of said contract, the assignment thereof and two letters, dated respectively the 27th and 28th days of July, 1916, and supplemental thereto, are attached hereto, [fol. 2] are made a part hereof and are marked Exhibit "A."

3. On or about the 16th day of January, 1917, your petitioner became the assignee for value of a certain contract for the construction of one Standard steel cargo steamship of approximately 7300 tons deadweight, designated therein as Hull No. 7, which contract was entered into on the 27th day of October, 1916, between the Standard Shipbuilding Corporation of New York, N. Y., U. S. A., a corporation organized under the Laws of the State of New York and one B. Stolt Nielsen of Haugesund, Norway, and was assigned by said B. Stolt Neilson to Birger Pedersen and Son, also of Haugesund, Norway, who, in turn assigned their right, title and interest in and to said contract on the date hereinabove mentioned to your petitioner. Copy of said contract and the assignments thereof are attached hereto, made part hereof and are marked Exhibit "B."

4. Public Act No. 23 of the 65th Congress, House Resolution No. 2971, entitled "An Act Making appropriation to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes" approved on the 15th day of June, 1917, provided that:

"The President is hereby authorized and empowered, within the limits of the amounts herein authorized * * *

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at [fol. 3] the disposal of the United States the whole of any part of the output of such plant, to deliver such output or

part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship. * * *

Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sums as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

[fol. 4] The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: Provided, that all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation or contractor.

The word 'ship' shall include any boat, vessel, or submarine and the parts thereof."

5. Under authority of, and pursuant to the provisions of said act of the 15th day of June, 1917, referred to in Paragraph marked "4" in this petition, the President of the United States, on the 11th day of July, 1917, issued the following executive order:

"By virtue of authority vested in me in the section entitled 'Emergency Shipping Fund' of an Act of Congress entitled, 'An Act Making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, approved June 15th, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power [fol. 5] and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessel in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board, may in the discretion of said Board, be exercised directly by the said Board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

Woodrow Wilson.

The White House, 11th of July, 1917."

6. The United States Shipping Board Emergency Fleet Corporation on the 16th day of August, 1917, under the provisions of said Act, approved the 15th day of June, 1917, and by authority of said Executive Order of the President, dated the 11th day of July, 1917, issued to your petitioner the following requisition order, with enclosure [fol. 6] marked "A" attached thereto:

"Aug. 16, 1917.

Russian Volunteer Fleet Association, 44 Whitehall St., New York City.

DEAR SIRS: On August 3, 1917, the United States Emergency Fleet Corporation issued to the Standard Shipbuilding Company the notice or requisition, set forth in enclosure marked (A).

In response to this communication the Standard Shipbuilding Corporation, the shipbuilders, informed us that you, as owners, or representatives of owners, had entered into a contract with them for the vessels listed below:

Hull No.	Type	D. W., ton-	Date of contract
6	Cargo Steamship	7,300	7-21-16
7	" "	7,300	10-27-16

The Corporation's District Officer having charge of vessels in the District in which the Shipbuilders are located has been instructed to take charge, for the Corporation, of the completion of vessels now under construction and has been authorized temporarily to take over your local inspecting officers at their present compensation. Will you please inform the District Officer, Mr. Eads Johnson, at 115 Broadway, New York City, the names of your representatives and their compensation, sending a duplicate to this office. Your co-operation with the Corporation is invited.

[fol. 7] The Corporation will consider payments to the Contractor accruing since the date of requisition, upon the receipt of proper vouchers and adequate information to be forwarded through its District Officers.

You are requested, as soon as possible, to report to the Corporation a statement in detail of the payments already made by you on each ship named above prior to the date

of the requisitioning, August 3, 1917. This statement should be accompanied by the original vouchers and receipts and should be verified under oath by the proper corporate officer of your company.

It is the present intention of the Corporation to reimburse you promptly so far as funds are available, for the payments heretofore made to the shipbuilders if after investigation of data submitted by you, such payments are found in order and in conformity with the contract requirements.

At your further and early convenience, you are requested to submit to the Corporation a statement of such indirect expenditures as you have made on account of each vessel, for instance, the cost of superintendence, original design, interest on funds already paid, and the like. The matters mentioned will require careful audit, and in addition you may submit any other matters you deem pertinent.

It will be perceived that the Corporation presumes it is addressing this letter to the Owners, or responsible representatives of the Owners, or persons entitled to receive compensation on account of the requisition of the vessels listed above. The Corporation requests that there be included in your response to this letter all evidence of ownership which is necessary to establish the right of those who are entitled [fol. 8] to receive the compensation provided by law.

The consummation of the orders herein, and heretofore transmitted, will be made the subject of later appropriate corporate action.

Very truly yours, W. L. Capps, General Manager."

Enclosure (1).

"Enclosure 'A'

To Russian Volunteer Fleet Association:

Re Standard Shipbuilding Corporation

By virtue of an act of Congress, approved June 15, 1917, entitled 'An Act Making appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes' and by authority delegated to the United States Shipping Board Emergency Fleet Corporation under Executive Order of the President, dated July 11, 1917, all power-driven cargo-carrying and

passenger ships, above 2500 tons d. w. capacity, under construction in your yard and certain materials, machinery, equipment, outfit and commitments for materials, machinery, equipment and outfit necessary for their completion are hereby requisitioned by the United States.

On behalf of the United States, by virtue of said Act and said Order, you are hereby required to complete the con- [fol. 9] struction of said requisitioned ships under construction and will prosecute such work with all practicable dispatch.

The compensation to be paid will be determined hereafter and will include ships, material and contracts requisitioned.

You will furnish immediately general plans and detail specifications of the ships requisitioned, and copies of contracts and all supplemental agreements in relation thereto and full particulars as to owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and just determination of the obligations of the Emergency Fleet Corporation in taking over these ships and contracts.

You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this Corporation.

(Signed) W. L. Capps, General Manager United States Shipping Board Emergency Fleet Corporation.

Washington, D. C., August 3, 1917."

7. Acting pursuant to said Act of Congress, and by authority of said Executive Order, said United States Shipping Board Emergency Fleet Corporation, for use of the United States, did on the 3rd day of August, 1917, by virtue of said order, requisition and take over the contracts belonging to your petitioner as aforesaid for the costruction of two ships, and/or said ships belonging to your petitioner, [fol. 10] then being constructed in the shipyard of said Standard Shipbuilding Corporation, and the United States Government thereby became liable to your petitioner for its just and adequate compensation for the requisitioning and taking of said contracts for the construction of said ships and/or said ships.

8. Your petitioner subsequent thereto, and on or about the 26th day of August, 1919, submitted to the United States Shipping Board Emergency Fleet Corporation, the petitioner's affidavit of claim and vouchers in support thereof, in which your petitioner makes claim for just compensation due and owing it in the sum of Three Million Eight Hundred Fifty-one Thousand Eight Hundred Fourteen and 41/100 ($3,851,814.41) Dollars plus interest from the dates when the payments therein set forth were made to the time when payment is to be made to your petitioner by the United States Government.

9. Subsequent to the submission of the affidavit of claim referred to in the previous paragraph, the Board of Trustees of the United States Shipping Board Emergency Fleet Corporation, on March 5th, 1920, passed the following resolution:

"Resolved, That just compensation to the Russian Volunteer Fleet on account of the requisitioning of Hulls Nos. 6 and 7 under construction by the Standard Shipbuilding Corporation, in accordance with Requisition Order dated August 3, 1917, be and it is hereby fixed at $530,144.10, in addition to the sum of $882,388.25 representing certain progress payments made to the shipbuilder which is to be a refund to said Russian Volunteer Fleet, making a total of $1,412,532.35; and be it

[fol. 11] Further resolved, That payment of said just compensation and refund of progress payments to the Russian Volunteer Fleet be withheld pending advice from the Department of State as to how and to whom said money shall be paid and be it

Further resolved, That the General Comptroller be and he hereby is authorized to approve for payment, and the Treasurer to pay, the said amount of $1,412,532.35 to whomsoever the Department of State shall designate as properly and legally entitled thereto.

A true copy. John Flaherty, Secretary."

10. The value of the contracts for the construction of ships and/or the ships taken from the petitioner as hereinbefore set forth was $4,000,000.00.

11. Your petitioner further avers that it is justly entitled to the amount last above set forth after allowing all just credits and off-sets and that no payments or partial payment has been made to the plaintiff for its property taken as hereinbefore set forth.

12. That no assignment or transfer of your petitioner's claim or any part thereof or interest therein has been made and that your petitioner at all times has been a citizen of Russia and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the Government of the United States.

13. Citizens of the United States are and at the time of and since the commencement of this suit have been accorded the right to prosecute claims against the Russian Government in the Court of that Government.

[fol. 12] Wherefore your petitioner prays judgment for Four Million Dollars ($4,000,000.00), with interest from the third day of August, 1917, as just compensation for the contracts, and for ships taken from your petitioner, as hereinbefore set forth.

The Russian Volunteer Fleet, by Isaiah J. Hoorgin, Agent. Charles Recht, Attorney of Record. Horace S. Whitman, H. Rozier Dulany, Alexander H. McCormick, Of Counsel.

[fol. 13] *Duly sworn to by Isaiah J. Hoorgin. Jurat omitted in printing.*

[fol. 14] EXHIBIT "A" TO AMENDED PETITION

Standard Shipbuilding Corporation. Ship Builders—Drydocking—Ship Repairs, 44 Whitehall Street, New York
Telephone Broad 3935-6
Shipyard: Richmond Boro, N. Y.; Tel.: 610 West Brighton; Cable Address: "Downeyard", New York
New York

Our contracts and deliveries are subject to delays from accidents, strikes, fires, Government requisitions, war and other causes beyond our reasonable control.

This is to certify that these are correct plans and specifications for the construction of one (1) "Standard Cargo

Steamship," contracted to be built by the Standard Shipbuilding Corporation, of New York, N. Y., U. S. A., for Christian Haaland, of Haugesund, Norway, under date of July 21st, 1916.

Charles C. Bowers, Assistant Manager, Standard Shipbuilding Corporation.

Signed before me this 27th day of July, 1916. Antonio Polito, Notary Public, Kings Co., #110. Cert. filed in N. Y. Co. #193.

[fol. 15] Standard Shipbuilding Corporation, 44 Whitehall Street, New York, N. Y., U. S. A., in Contract with Christian Haaland, of Haugesund, Norway.

This Contract made the 21st day July, 1916, by and between the Standard Shipbuilding Corporation, of New York, N. Y., U. S. A., a corporation organized under the laws of the State of New York, (hereinafter called the Builders), party of the first part; and Christian Haaland, of Haugesund, Norway, (hereinafter called the Purchaser), party of the second part;

Witnesseth: That the said parties mutually agree as follows:

The Builders, for and in consideration of the payments of money to be made by the Purchaser to the Builders, as hereinafter specified, hereby agree to build, sell and deliver, and the Purchaser hereby agrees to buy, pay for and accept, one (1) Standard Cargo Steamship of the following general description, and in detail as per specifications hereto attached, signed by parties hereto, and forming a part of the contract. Workmanship of said vessel to be first-class in every respect and materials to be of a kind and quality named in said specifications.

General Description: The vessel herein agreed upon shall be a single screw, 'tween deck, steel cargo steamship of approximately seventy-three hundred (7300) tons deadweight capacity in Lloyd's summer freeboard rules. This ship shall be designed, built, and equipped to comply with [fol. 16] the requirements of British Lloyd's Register for ocean going cargo steamships to class 100-A1, and to com-

ply with the requirements of the Norwegian Board of Sea Control laws in force at the date of this contract.

General Dimensions, approximately: Length over all, 392 feet 6 inches. Lloyd's length, 377 feet. Breadths moulded 52 feet. Depth at side to upper deck 29 feet. Rise of floor 6 inches. Loaded draft, mean, British Lloyd's summer freeboard 23 feet 8 inches. Cargo capacity about seventy-three hundred (7300) tons deadweight, including cargo, coal, stores, water, crew and effects. Speed, ten and one-half (10½) knots loaded. Purchaser to provide load necessary for trial trips.

General Conditions: It is the intent of the parties hereto, and the purpose of this contract, to provide for the construction and equipment of a Standard Cargo Steamship in accordance with the details set forth herein, ready for service, the Purchaser to furnish fuel, stores, and perishable supplies. Builders agree to promptly repair or replace if necessary any defective materials, or workmanship due to the fault of the Builders and found defective, in the hull or machinery within three months after delivery of the vessel by the Builders. If said repair or replacement is not done at the Builders' shipyard in New York, then the Builders shall pay only an amount equal to the cost which would accrue to the Builders for doing such work at the Builders' shipyard. At the expiration of three months after delivery of the vessel by the Builders, the Builders' liability or responsibility for any parts of the vessel shall terminate. The Builders may elect to appoint the chief engineer to serve during the time of the Builders' responsibility for parts, but the Purchaser shall pay any engineer so provided only the prevailing wages, and any extra wages paid the said engineer shall be paid by the Builders. If dur- [fol.17] ing the progress of the work any changes in the plans and specifications are desired by the Purchaser and if such changes do not involve any additional charge or time, they shall be made by the Builders upon receiving the Purchaser or the Purchaser's representative designated in writing to the Builders, a written request for the same. If such changes do involve any additional charge or time, then before the work shall be started on the alterations in question the Builders shall furnish to the Purchaser in writing

a quotation giving the additional charge and time required and the Purchaser shall promptly accept said quotation in writing, on failure of which acceptance, such request for alterations shall be disregarded. It is further expressly stipulated and agreed that no extra payment or deduction in the contract price shall be or become due or payable except as above provided. It is mutually understood that such request for alterations and alterations made pursuant thereto shall not in any way invalidate this contract.

Until the completion and tender of delivery of said vessel to the Purchaser as above provided, said vessel shall be at the risk of the Builders.

The builders hereby agree to insure the vessel against all damage by fire, launching or other accidents, possible to cover by insurance, during the entire time of construction and until delivery. Rights in said insurance shall accrue to the Purchaser pro rata as the Purchaser makes payments as provided for in this contract. Said insurance shall run to the Builders and the Purchaser as their respective interests may appear. If the Builders can or do complete and deliver the vessel to the Purchaser, or his agents, before the 31st day of May, 1917, financial gain will accrue to the Purchaser; therefore it is agreed that the Builders shall receive from the Purchaser Five Hun-
[fol. 18] dred Dollars ($500.00) per day for each and every day of pre-delivery. In event that the Builders fail to complete or deliver the vessel on or before the 31st day of May, 1917, financial loss will accrue to the Purchaser; therefore it is agreed that the Builders shall make good to the purchaser financial loss resulting from delay in delivery for any cause not excepted herein, at the rate of Five Hundred Dollars (500.00) for each day after May 31st, 1917, or such later date as may be fixed by agreed extensions of time under the terms of this contract, which it is mutually agreed shall constitute liquidated damages. The time of completion or delivery of the vessel, or vessels, specified in this contract is subject to delays by acts of God, fires, floods, war, Government requisition or commandeering, strikes or lockouts of workmen, provided such lockouts are reasonably justified, when and wherever the vessel, or vessels, herein specified, or any parts thereof, are under contract or in process of construction, and by delay in payment by the Purchaser, or his agents, of any money

or payments due the Builders under the terms of this contract, or by alterations or additions by, or at the request of the Purchaser or his agents, or delay in receipt of materials not caused by the Builders, it being understood that due care will be exercised by the Builders in obtaining such materials and proper and reasonable precautions taken by the Builders to procure the same, or by any other cause whatsoever not within the absolute control of the Builders. If the Builders are prevented or delayed in commencement or performance of any part of this contract by any of the causes specified, then the Purchaser, or his agent or assigns, shall grant the Builders one day additional time for the performance of this contract for each and every day lost time or delay resulting from any of the causes specified or implied hereinbefore.

[fol.19] Purchase Price, Payments and Guarantees: The Purchaser hereby agrees to pay to the Builders and the Builders hereby agree to accept, the price of One Hundred and Nineteen Dollars and Eighty-six Cents ($119.86), for each ton of deadweight capacity of the vessel, as she is finally and officially measured. The estimated dead-weight tonnage of the vessel is about seventy-three hundred (7300) tons; therefore, for the purpose of this contract, until the vessel is officially measured, the gross price is based upon seventy-three hundred (7300) tons D. W. at One Hundred and Nineteen Dollars and Eighty-six Cents ($119.86) per D. W. ton, making estimated price of the vessel Eight Hundred and Seventy-five Thousand Dollars ($875,000.00). The Purchaser agrees to pay said estimated price to the Builders in lawful money of the United States of America, in payments as follows:

1st	payment	on signing contract	$87,500.00
2nd	"	" " "	131,250.00
3rd	"	August 20th, 1916	65,625.00
4th	"	Sept. 20th, 1916	65,625.00
5th	"	October 20th, 1916	65,625.00
6th	"	November 20th, 1916	65,625.00
7th	"	December 20th, 1916	65,625.00
8th	"	January 20, 1917	65,625.00
9th	"	February 20th, 1917	65,625.00
10th	"	March 20th, 1917	65,625.00
11th	"	April 20th, 1917	65,625.00

Twelfth payment when the vessel is ready for delivery, in accordance with the terms of this contract, the final payment shall be made and shall include payment in full for the remainder of the principal sum of this contract and any and all amounts due the Builders for any extras or other charges over and above the price of the vessel as hereinbe- [fol. 20] fore fixed, and also for any dead weight tonnage capacity over 7300 tons shown by official measurement, and also for any bonus earned by the Builders by pre-delivery. If official measurement should be short of 7300 D. W. tons, One Hundred and Nineteen Dollars and Eighty-six Cents ($19.86) shall be deducted from final payment for each D. W. ton short. If the Builders are indebted to the Purchaser for delay in delivery, for cause other than herein specified, said indebtedness shall be deducted from the final payment.

The Builders shall place in escrow with a bank or trust company satisfactory to Builders the first two payments of Two Hundred Eighteen Thousand Seven Hundred Fifty ($218,750) Dollars each herein mentioned when paid, to be held by the said bank or trust company as security to said Purchaser for the faithful performance of this contract by the Builders and to be paid to said Builders upon acceptance of said vessel by the purchaser on complete performance of this contract by the Builders. In case of default of Purchaser to make any of the payments herein provided, a continuance of such default for thirty (30) days after the due date herein specified, the said bank or trust company shall, at the expiration of thirty (30) days from the beginning of said default, pay over to the Builders said money so held in escrow, provided, however that said Builders at any time may substitute for said escrow a bond in favor of the Purchaser with a satisfactory surety company as surety in the sum of Two Hundred Eighteen Thousand Seven Hundred Fifty ($218,750) Dollars conditioned for the faithful performance of this contract by the Builders, whereupon said escrow money shall be paid to the said Builders.

W. D.
T. K. H.

[fol. 21] The Builders hereby agree to indemnify and save harmless the Purchaser from any suits, judgments,

damages or claims whatsoever for infringements of any patents or patent rights by the Builders, the Builders agreeing, in the event of suit being brought against the Purchaser, upon notice being given to the Builders, that they will have their lawyers defend said suit or suits without cost to the Purchaser.

Inspection and Delivery: During all working hours while the vessel is in course of construction, the Purchaser's representative, A. O. Andersen & Company, or another representative satisfactory to the Builders if appointed in their stead, shall have free access to the shipyard and shops of the Builders to inspect the vessel or her parts. Classification Inspectors shall have like access. Upon receipt of all payments due the Builders, when the vessel is ready for delivery, the Builders shall deliver said vessel to the Purchaser, or his agents, at New York, free and clear of all encumbrances with all usual official documents, including Lloyd's classification. Should any question or disagreement arise between the parties hereto, relating to any part of the contract, and parties hereto fail to agree thereon, such question or disagreement shall be adjusted and settled by arbitration; one arbitrator to be appointed by the Purchaser and one by the Builders. These two arbitrators to appoint a third, and a majority decision of said Board shall be binding upon both parties hereto and finally settle any disagreements which may arise. Cost of arbitration to be borne equally by parties hereto.

In case the Builders do not proceed with reasonable dispatch in the building of the vessel according to the meaning hereof, the Purchaser may enter into the Building Yard of the Builders and employ any number of workmen and [fol. 22] use and employ the necessary machinery, engines and tools of the Builders, and proceed with the finishing of the vessel, and for that purpose use, purchase, and provide any other materials to be properly employed thereon, and pay for such materials, and pay the wages of the workmen out of the balance remaining unpaid of the said purchase money, and in case the same shall be insufficient for the purpose, then the Builders shall, on demand, pay and make good the deficiency, but the Builders shall always have the right to furnish any labor and material and to resume the performance of the contract.

It is understood and agreed that the vessel or any parts thereof, herein contracted for, shall at all times be the property of the Purchaser in so far as he has made payments on account of same, and that all materials purchased and delivered to the yards of the Builders for her construction shall become the Purchaser's property by such delivery, so far as the Purchaser has paid for same, but the vessel and all parts thereof, shall always be subject to a lien by the Builders for any unpaid instalment of the purchase price and for work done and labor and materials furnished in excess of the amount of payments then made.

It is further covenanted and agreed that time and the exact and punctual performance of each and every term and condition in this agreement provided is of the essence of this agreement; and it is further covenanted and agreed that should the Purchaser make default in the payment of any of the instalments of said purchase price, after the same or any thereof become due and payable hereinunder for a space of twenty (20) days, the Builders upon ten (10) days' written notice to the Purchaser's agent in New York, A. O. Andersen & Company, of intention so to do, shall be [fol. 23] at liberty to sell the vessel at the highest price and on the best terms obtainable, whether at auction or by private contract, and should the vessel be sold at a price in excess of Eight Hundred and Seventy-five Thousand Dollars ($875,000.00), then said excess is to be paid to the Purchaser as well as all instalments paid by him on the purchase price, less any expense reasonably incurred by the Builders in making such sale. Should the vessel be sold for less than Eight Hundred and Seventy-five Thousand Dollars ($875,000.00), plus any other or additional expenses which the Builders may reasonably incur thereby, then the difference shall be paid by the Purchaser to the Builders, and shall be withheld out of the instalments theretofore paid by the Purchaser to the Builders, which instalments, with this exception, shall be returned to the Purchaser. If the instalments paid by the Purchaser at the time of such sale shall be insufficient to cover the deficit above referred to, then such deficit shall immediately be made good by the Purchaser.

The right in this paragraph given shall be considered cumulative and shall not in any way limit or restrict any

other rights or remedies existing in favor of the Builders, or which may accrue to the Builders upon any default by the Purchaser.

This contract shall bind the Purchaser and his successors or assigns, and the Builders and their successors or assigns.

In witness whereof, the Standard Shipbuilding Corporation of New York has caused these presents to be executed in duplicate by its First Vice-President and its corporate seal to be hereto affixed, and Christian Haaland, of [fol. 24] Haugesund, Norway, has caused these presents to be executed by his duly authorized agents the day and year first above written.

Standard Shipbuilding Corporation, by Wallace Downey, First Vice-President. Attest: Henry W. Baird, secretary. Christian Haaland, for and by Cable Authority of Christian Haaland. A. O. Andersen & Co., New York Branch; Frank K. Hitching, Asst. Manager, as agents. Witness: V. Reimann.

Transferred to Messrs. The Russian Volunteer Fleet Association, 33 Italjanskaja, Petrograd, terms of payment and conditions as per separate contract dated 13th. January, 1917.

Haugesund, January 13th, 1917.

Christian Haaland.

Witness: Thos. Murer.

[fol. 25] Guaranty Trust Company of New York, 140 Broadway, Capital: $20,000,000. Surplus: $20,000,000.

Cable Address: "Fidelitas"

Fifth Avenue Office: Fifth Avenue and 43rd St.; Cable Address: "Notromco." London Office: 33 Lombard Street, E. C.; Cable Address: "Garritus."

F. J. H. Sutton, Trust Officer. R. J. F. Allen, Assistant Trust Officer

New York, July 28, 1916.

National City Bank, 55 Wall Street, New York, N. Y.

Dear Sirs: We acknowledge receipt from you today of the sum of $218,750 to be held by this company as depositary under letter of instructions dated July 27th, 1916,

signed by Christian Haaland by their Agents A. O. Anderson & Co., and the Standard Shipbuilding Corporation.

Yours very truly, R. J. F. Allen, Assistant Trust Officer.
Christian Haaland. AEB/F.

Witness: Haugesund's Privatbank. Thos. Murer.

[fol. 26] Standard Shipbuilding Corporation, Ship Builders—Drydocking—Ship Repairs, 44 Whitehall Street, New York, Telephone: Broad 3935-6.
Shipyard: Richmond Boro, N. Y.; Tel. 510 West Brighton:
Cable Address: "Downeyard," New York

Our contracts and deliveries are subject to delays from accidents, strikes, fires, government requisitions, war and other causes beyond our reasonable control.

New York, July 27, 1916.

Guaranty Trust Company of New York, 140 Broadway, New York, N. Y.

GENTLEMEN: The undersigned hereby, deposits with you in escrow the sum of Two Hundred, Eighteen Thousand, Seven Hundred and Fifty Dollars ($218,750.00) to be held by you under the following instructions:

1. The sum deposited herewith is to be paid over to the Standard Shipbuilding Corporation, of 44 Whitehall Street, New York City, upon submission to you by the Standard Shipbuilding Corporation of the written acceptance on the part of Christian Haaland, his agents or assigns, of a "Standard Cargo Steamship" to be constructed as described in a certain contract entered into on the 21st day of July, 1916, by and between the Standard Shipbuilding Corporation, of New York City, and Chris-[fol. 27] tian Haaland, of Haugesund, Norway.

2. In case of default of Christian Haaland to make any one of the following payments, then in that event thirty (30) days after the date of default, the said sum deposited shall be paid over to the Standard Shipbuilding Corporation:

3rd	payment	August 20, 1916	$65,625.00
4th	"	September 20, 1916	65,625.00
5th	"	October 20, 1916	65,625.00
6th	"	November 20, 1916	65,625.00

7th	"	December 20, 1916	65,625.00
8th	"	January 20, 1917	65,625.00
9th	"	February 20, 1917	65,625.00
10th	"	March 20, 1917	65,625.00
11th	"	April 20, 1917	65,625.00

A written statement under oath on the part of the Standard Shipbuilding Corporation that Christian Haaland is in default shall constitute sufficient evidence to the Guaranty Trust Company of New York for the latter to pay the fund deposited herewith over to the Standard Shipbuilding Corporation.

3. In the event of default or non-fulfillment of contract by Builders, deposit shall be paid out to Purchaser ten days from the default or declaration of non-fulfillment. Evidence shall be a certification given by the arbitrators nominated as stipulated by the following clause:

"Each party to the contract to choose one arbitrator within three days from the receipt of a written demand for arbitration made by the other party, and the failure on the part of either party to choose an arbitrator within three days of such demand, shall confer the right on the other party to choose not only its own arbitrator, but an arbitrator in place of the one so failed to be appointed by the [fol. 28] other party; any two arbitrators so chosen in the event of their failure to agree shall choose a third, and the decision of any two so chosen and acting as such arbitrators, shall be final and binding upon the parties to said contract."

4. The said fund deposited shall be paid over to the Standard Shipbuilding Corporation upon the latter substituting for said deposited fund a bond in favor of Christian Haaland, with a surety company as surety, satisfactory to Christian Haaland, or A. O. Andersen & Company as agents, in the sum of Two Hundred, Eighteen Thousand, Seven Hundred and Fifty Dollars ($218,750.00) conditioned upon the faithful performance of the above mentioned contract by the Standard Shipbuilding Corporation.

The Guaranty Trust Company assumes no responsibility or liability whatever, its only duty being to hold the deposited fund in the above mentioned manner and the under-

signed agrees jointly and severally to hold the Guaranty Trust Company harmless from any loss that they may sustain by virtue of their agreeing to hold said fund.

Christian Haaland, by His Agent by Telegraphic Authority, Frank K. Hitching. Standard Shipbuilding Corporation, by Wallace Dooney, 1st Vice-Pres.-Gen'l Manager. Attest: Hy. W. Baird, Secretary. (Seal.)

[fol. 29] Exhibit "B" to Amended Petition

Standard Shipbuilding Corporation, No. 44 Whitehall St., New York, N. Y., U. S. A., Mr. B. Stolt Nielsen, of Haugesund, Norway.

This contract made the twenty-seventh day of October, 1916, by and between the Standard Shipbuilding Corporation of New York, N. Y., U. S. A., a corporation organized under the laws of the State of New York (hereinafter called the Builders), party of the first part; and Mr. B. Stolt Nielsen, of Haugesund, Norway (hereinafter called the Purchaser), party of the second part;—A. O. Andersen & Company, Inc., of New York, N. Y., U. S. A., acting in his behalf in signing this contract,

Witnesseth: That the said parties mutually agree as follows:

The Builders, for and in consideration of the payments of money to be made by the Purchaser to the Builders, as hereinafter specified, hereby agree to build, sell and deliver and the Purchaser hereby agrees to buy, pay for and accept, one (1) Standard Cargo Steamship, to be known as Builders No. 7, of the following general description, and in detail as per specifications hereto attached, signed by parties hereto, and forming a part of the contract. Workmanship of said vessel to be first-class in every respect and materials to be of a kind and quality named in said specifications.

[fol. 30] General Description: The vessel herein agreed upon shall be a single screw, 'tween deck, steel cargo steamship of approximately seventy-three hundred (7300) tons deadweight capacity on Lloyd's summer freeboard rules.

This ship be designed, built, and equipped to comply with the requirements of British Lloyd's Register for ocean going cargo steamships to class—100—A1, and to comply with the Requirements of Norwegian Board of Sea Control laws in force at the date of this contract.

General Dimensions, approximately: Length over all, 392 feet 6 inches. Lloyd's length, 377 feet. Breadth moulded 52 feet. Depth at side to upper deck 29 feet. Rise of floor 6 inches. Loaded draft, mean, British Lloyd's summer freeboard 23 feet 8 inches. Cargo capacity about seventy-three hundred (7300) tons deadweight, including cargo, coal, stores, water, crew and effects. Speed, ten and one-half (10½) knots loaded. Purchaser to provide load necessary for trial trips.

General Conditions: It is the intent of the parties hereto, and the purpose of this contract, to provide for the construction and equipment of a Standard Cargo Steamship in accordance with the details set forth herein, ready for service, the Purchaser to furnish fuel, stores, and perishable supplies. Builders agree to promptly repair or replace if necessary any defective materials, or workmanship due to the fault of the Builders and found defective, in the hull or machinery within three months after delivery of the vessel by the Builders. If said repair or replacement is not done at the Builders' shipyard in New York, then the Builders shall pay only an amount equal to the cost which would accrue to the Builders for doing such work at the Builders' shipyard. At the expiration of three months after delivery of the vessel by the Builders, the Builders' lia- [fol. 31] bility or responsibility for any part of the vessel shall terminate. The Builders may elect to appoint the Chief Engineer to serve during the time of the Builders' responsibility for parts, but the Purchaser shall pay any engineer so provided only the prevailing wages, and any extra wages paid the said engineer shall be paid by the Builders. If during the progress of the work any changes in the plans and specifications are desired by the Purchaser, and if such changes do not involve any additional charge or time, they shall be made by the Builders upon receiving from the Purchaser or the Purchaser's representative designated in writing to the Builders, a written request for the same. If such changes do involve any additional charge or time, then

before the work shall be started on the alterations in question, the Builders shall furnish to the Purchaser in writing a quotation giving the additional charge and time required, and the Purchaser shall promptly accept said quotation in writing, on failure of which acceptance such request for alterations shall be disregarded. It is further expressly stipulated and agreed that no extra payment or deduction in the contract price shall be or become due or payable except as above provided. It is mutually understood that such request for alterations and alterations made pursuant thereto, shall not in any way invalidate this contract.

Until the completion and tender of delivery of said vessel to the Purchaser as above provided, said vessel shall be at the risk of the Builders.

The Builders hereby agree to insure the vessel against all damage by fire, launching or other accidents, possible to cover by insurance, during the entire time of construction and until delivery. Rights in said insurance shall accrue to the Purchaser pro rata as the Purchaser makes payments as provided for in this contract. Said insurance [fol. 32] shall run to the Builders and the Purchaser as their respective interests may appear. If the Builders can or do complete and deliver the vessel to the Purchaser, or his agents, before the 30th day of June, 1917, financial gain will accrue to the Purchaser, therefore, it is agreed that the Builders shall receive from the Purchaser Five Hundred Dollars ($500.00) per day for each and every day of predelivery. In event that the Builders shall fail to complete or deliver the vessel on or before June 30th, 1917, financial loss will accrue to the Purchaser; therefore it is agreed that the Builders shall make good to the Purchaser financial loss resulting from delay in delivery for any cause not excepted herein, at the rate of Five Hundred Dollars ($500.00) for each day after June 30th, 1917, or such later date as may be fixed by agreed extensions of time under the terms of this contract, which it is mutually agreed shall constitute liquidated damages. The time of completion or delivery of the vessel, or vessels, specified in this contract is subject to delays by acts of God, fires, floods, war, Government requisition or commandeering, strikes or lockouts of workmen, provided such lockouts are reasonably justified, when and wherever the vessel, or vessels, herein spe-

cified, or any parts thereof, are under contract or in proc ess of construction, and by delay in payment by the Purchaser, or his agents, of any money or payments due the Builders under the terms of this contract, or by alterations or additions by, or at the request of, the Purchaser, or his agents, or delay in receipt of materials not caused by the Builders, it being understood that due care will be exercised by the Builders in obtaining such materials and proper and reasonable precautions taken by the Builders to procure the same, or by any other cause whatsoever not within the absolute control of the Builders. If the Builders are prevented or delayed in commencement or performance of any [fol. 33] part of this contract by any of the causes specified, then the Purchaser, or his agent or assigns, shall grant the Builders one day additional time for the performance of this contract for each and every day lost time or delay resulting from any of the causes specified or implied hereinbefore.

Purchase Price, Payments, and Guarantees: The Purchaser hereby agrees to pay to the Builders, and the Builders hereby agree to accept, the price of One Hundred and Forty-Seven Dollars and Fifty Cents (147.50), for each ton of deadweight capacity of the vessel, as she is finally and officially measured. The estimated deadweight tonnage of the vessel is about seventy-three hundred (7300) tons; therefore, for the purpose of this contract, until the vessel is officially measured, the gross price is based upon seventy-three hundred (7300) tons D. W. at One Hundred and Forty-Seven Dollars and Fifty Cents ($147.50), making estimated price of the vessel One Million, Seventy-six Thousand, Seven Hundred and Fifty Dollars ($1,076,750.00). The Purchaser agrees to pay said estimated price to the Builders in lawful Gold Coin of the United States of America, as follows:

First Payment,	on signing		$269,187.50
Second	"	December 3, 1916	107,675.00
Third	"	January 3, 1917	107,675.00
Fourth	"	February 3, 1917	107,675.00
Fifth	"	March 3, 1917	107,675.00
Sixth	"	April 3, 1917	107,675.00
Seventh	"	May 3, 1917	107,675.00
Final	"	On delivery of vessel	161,512.50

When the vessel is ready for delivery, in accordance with the terms of this contract, the final payment shall be made and shall include payment in full for the remainder of the principal sum of this contract and any and all amounts due [fol. 34] the Builders for any extras or other charges over and above the price of the vessel as hereinbefore fixed, and also for any deadweight tonnage capacity over 7300 tons shown by official measurement, and also for any bonus earned by the Builders by pre-delivery. If official measurement should be short of 7300 D. W. tons, One Hundred Forty-seven Dollars and Fifty Cents ($147.50) shall be deducted from final payment for each D. W. ton short. If the Builders are indebted to the Purchaser for delay in delivery, for causes other than herein specified, said indebtedness shall be deducted from the final payment.

The Builders shall place in escrow with a bank or trust company satisfactory to Builders, the first payment of Two Hundred Sixty-nine Thousand and One Hundred and Eighty-seven Dollars Fifty Cents ($269,187.50) herein mentioned when paid, to be held by the said bank or trust company as security to said Purchaser for the faithful performance of this contract by the Builders and to be paid to said Builders upon acceptance of said vessel by the Purchaser on complete performance of this contract by Builders. In case of default of Purchaser to make any of the payments herein provided a continuance of such default for thirty (30) days after the due date herein specified, the said bank or trust company shall at the expiration of thirty (30) days from the beginning of said default, pay over to the Builders said money so held in escrow, provided, however, that said Builders at any time may substitute for said escrow a bond in favor of the Purchaser with a satisfactory surety company as surety in the sum of Two hundred Sixty-nine Thousand One Hundred and Eighty-seven Dollars, Fifty Cents ($269,187.50), conditioned for the faithful performance of this contract by the Builders, whereupon said escrow money shall be paid to said Builders.

[fol. 35] The Builders hereby agree to indemnify and save harmless the Purchaser from any suits, judgments, damages or claims whatsoever for infringements of any patents or patent rights by the Builders, the Builders agreeing, in the event of suit being brought against the Purchaser upon

notice being given to the Builders, that they will have their lawyers defend said suit or suits without cost to the Purchaser.

Inspection and Delivery: During all working hours while the vessel is in course of construction, the Purchaser's representative, A. O. Andersen & Company, Inc., or another representative satisfactory to the Builders if appointed in their stead, shall have free access to the shipyard and shops of the Builders to inspect the vessel or her parts. Classification Inspectors shall have like access. Upon receipt of all payments due the Builders, when the vessel is ready for delivery, the Builders shall deliver said vessel to the Purchaser or his agents, at New York, free and clear of all encumbrances with all usual official documents, including Lloyd's classification. Should any question or disagreement arise between the parties hereto, relating to any part of the contract, and parties hereto fail to agree thereon, such question or disagreement shall be adjusted and settled by arbitration; one arbitrator to be appointed by the Purchaser and one by the Builders. These two arbitrators to appoint a third, and a majority decision of said Board shall be binding upon both parties hereto and finally settle any disagreements which may arise. Cost of arbitration to be borne equally by parties hereto.

In case the Builders do not proceed with reasonable dispatch in the building of the vessel according to the meaning hereof, the Purchaser may enter into the Building Yard of the Builders and employ any number of workmen and use [fol. 36] and employ the necessary machinery, engines and tools of the Builders, and proceed with the finishing of the vessel, and for that purpose use, purchase, and provide any other materials to be properly employed thereon and pay for such materials, and pay the wages of the workmen out of the balance remaining unpaid of the said purchase money, and in case the same shall be insufficient for the purpose, then the Builders shall, on demand, pay and make good the deficiency, but the Builders shall always have the right to furnish any labor and material and to resume the performance of the contract.

It is understood and agreed that the vessel or any parts thereof, herein contracted for, shall at all times be the

property of the Purchaser insofar as he has made payments on account of same, and that all materials purchased and delivered to the yards of the Builders for her construction shall become the Purchaser's property by such delivery, so far as the Purchaser has paid for same, but the vessel and all parts thereof, shall always be subject to a lien by the Builders for any unpaid instalment of the purchase price and for work done and labor and materials furnished in excess of the amount of payments then made.

It is further covenanted and agreed that time and the exact and punctual performance of each and every term and condition in this agreement provided is of the essence of this agreement; and it is further covenanted and agreed that should the Purchaser make default in the payment of any of the instalments of said purchase price, after the same or any thereof become due and payable hereinunder for a space of twenty (20) days, the Builders upon ten (10) days' written notice to the Purchaser's agent in New York, A. O. Andersen & Company, of intention so to do, shall be at liberty to sell the vessel at the highest price and on the [fol. 37] best terms obtainable, whether at auction or by private contract, and should the vessel be sold at a price in excess of One Million, Seventy-six Thousand, Seven Hundred and Fifty Dollars ($1,076,750.00) then said excess is to be paid to the Purchaser as well as all instalments paid by him on the purchase price, less any expense reasonably incurred by the Builders in making such sale. Should the vessel be sold for less than One Million, Seventy-six Thousand, Seven Hundred and Fifty Dollars ($1,076,750.00) plus any other or additional expenses which the Builders may reasonably incur thereby, then the difference shall be paid by the Purchaser to the Builders, and shall be withheld out of the instalments theretofore paid by the Purchaser to the Builders, which instalments, with this exception, shall be returned to the Purchaser. If the instalments paid by the Purchaser at the time of such sale shall be insufficient to cover the deficit above referred to, then such deficit shall immediately be made good by the Purchaser.

The right in this paragraph given shall be considered cumulative and shall not in any way limit or restrict any other rights or remedies existing in favor of the Builders,

or which may accrue to the Builders upon any default by the Purchaser.

This contract shall bind the Purchaser and his successors or assigns, and the Builders and their successors or assigns.

In witness whereof the Standard Shipbuilding Corporation of New York has caused these presents to be executed in duplicate by its President and its corporate seal to be hereunto affixed, and Mr. B. Stolt Nielsen, of Haugesund, Norway, has caused these presents to be executed by his [fol. 38] duly authorized agents the day and year first above written.

Standard Shipbuilding Corporation. J. Marimon, President. Attest: Adrian H. Larkin, Secretary. B. Stolt Nielsen, for & by cable authority of A. O. Andersen & Co., Christiana; Frank K. Hitching, as Agents. V. Reiman.

This contract is hereby transferred to Messrs. Birger Pedersen & Sön, of Haugesund, who are thus taking over all my rights and obligations.

B. Stolt Ni[redacted]

Haugesund 3/1/1917.

Witness to signature: S. Brommeland. Oskar Bakkevig.

This contract is hereby transferred to Russian Volunteer Fleet Association, Italjanskaja, 33 Petrograd.

The sellers transfer and the buyers overtake all with the contract connected rights and obligations.

Kristiania, 16th Januar, 1917.

Birger Pedersen & Son, of Haugesund.

Witness to signature: Thos. Murer.

[fol. 39] III. Notation as to Answer of Defendant

No answer to the amended petition was filed in this case by the defendant, as provided by Rule 14.

IV. History of Further Proceedings

On May 7, 1927, the plaintiff filed motions (2), to issue commissions to take testimony for plaintiff in Berlin, Germany, and Paris, France, and accompanied same by interrogatories to be propounded.

On May 20, 1927, the defendant filed objections to said motion.

On May 21, 1927, the defendant filed cross-interrogatories to plaintiff's interrogatories.

On January 9, 1928, the plaintiff's motions to take testimony by special commission were argued and submitted.

On April 23, 1928, the court overruled said motions.

V. Plaintiff's Notice to Take Testimony—Filed September 22, 1928

September 19, 1928.

Herman J. Galloway, Esq., Assistant Attorney General, Washington, D. C.

My Dear Sir: I beg to advise you that we will take the evidence of Mr. Chazainow, President of the Russian Vol-[fol. 40]unteer Fleet, Mr. Charles Recht and Mr. Zhdanov at Room 608, Wilkins Building, Washington, D. C., on Monday the 24th at 2 P. M., before J. Arthur Lyman, Esquire, Notary Public, in the case of the Russian Volunteer Fleet vs. The United States, No. 69-A in the Court of Claims of the United States.

Yours very truly, Charles Recht, Horace S. Whitman.

VI. Defendant's Motion to Quash Plaintiff's Notice to Take Testimony—Filed Sept. 22, 1928

Comes now the defendant, by its Attorney General, and moves the Court to quash plaintiff's notice of September 19, 1928, of intention to take the testimony of Messrs. Chazainow, Recht and Zhdanov upon the ground that this Court is without jurisdiction of the subject matter of this proceeding, as more specifically shown in Defendant's Ob-

jections file herein on May 20, 1927, which objections the court sustained in its order of April 23, 1928, overruling the plaintiff's motion.

Herman J. Galloway, Assistant Attorney General.
P. M. Cox, Attorney.

VII. Argument and Submission of Defendant's Motion to Quash

On October 4, 1928, the defendant's motion to quash was argued and submitted by Mr. Percy M. Cox, for defendant, and by Messrs. Horace S. Whitman and Charles Recht, for plaintiff.

[fol. 41] VIII. Opinion of the Court by Sinnott, J.—Filed April 1, 1929

Sinnott, Judge, delivered the opinion of the court:

This matter comes before the court on defendant's motion to quash plaintiff's notice of September 19, 1928, to take the testimony of certain witnesses in Washington, D. C., and also to dismiss the petition.

It is stated in plaintiff's brief:

"The plaintiff in this case is a corporation and citizen of the Union of Soviet Socialist Republics. The plaintiff has alleged and now offers to prove that a citizen of the United States is or was accorded the right to prosecute claims against the said Russian Soviet Government in its courts or against the Kerensky government in the courts of that government."

It is contended by defendant that this court is without jurisdiction, upon the ground that it is asked to admit evidence and upon that evidence judicially to determine a political question involving the recognition of the existence of the Union of Soviet Socialist Republics in Russia, and also the recognition of the existence of a judiciary therein, which questions the defendant contends only the executive branch of our Government is empowered to determine.

The right of aliens to sue in this court is provided for in the Judicial Code, as follows:

"Sec. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

Whether there exists a government in Russia, known as the Union of Soviet Socialist Republics, is a question preliminary to the determination of the right of citizens of the United States to prosecute claims against such government in its courts.

It has been repeatedly held that, under our polity of government, the existence or nonexistence of governments is a matter for the determination by the executive and not the judicial department of this Government. This doctrine [fol. 42] is well stated by the Supreme Court in Kennett v. Chambers, 14 How. 30:

"It is a sufficient answer to the argument to say that the question whether Texas had or had not at that time become an independent State was a question for that department of our Government exclusively which is charged with our foreign relations. And until the period when that department recognized it as an independent State, the judicial tribunals of the country were bound to consider the old order of things as having continued, and to regard Texas as a part of the Mexican territory. And if we undertook to inquire whether she had not in fact become an independent sovereign State before she was recognized as such by the treaty-making power, we should take upon ourselves the exercise of political authority, for which a judicial tribunal is wholly unfit, and which the Constitution has conferred exclusively upon another department.

"This is not a new question. It came before the court in the case of Rose v. Himley, 4 Cr. 272, and again in Gelston v. Hoyt, 3 Wheat. 324. And in both of these cases the court said that it belongs exclusively to governments to recognize new States in the revolutions which may occur

in the world; and until such recognition, either by our own Government or the government to which the new State belonged, courts of justice are bound to consider the ancient state of things as remaining unaltered."

See also United States v. Palmer, 3 Wheat. 610; The Nueva Anna, 6 Wheat. 193; Jones v. United States, 137 U. S. 202; The Penza, The Tobolsk, 277 Fed. 91; Russian Socialist Federated Soviet Government v. Cibrario et al., 191 N. Y. S. 543; Lehigh Valley R. Co. v. State of Russia, 21 Fed. 2d, 396; Sokoloff v. National City Bank, 199 N. Y. S. 355.

We take the following pertinent excerpts from the above cases:

"All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of the legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings." Jones v. United States, supra, p. 214.

"The courts must follow and may not lead the executive. They have no authority to institute an original inquiry into conditions of a foreign state of government. Which is a sovereign, de jure or de facto, of a territory is not a judicial but a political question for determination. But the legislative and executive department of any government by its decision or action binds the judicial." The Penza, The Tobolsk, supra, p. 92.

"It is equally a settled rule of law that the foreign relations of our Government are committed by the Constitution to the executive and legislative departments of our Government, and what is done by such departments is not subject to judicial inquiry or decision. * * * It is for the executive and legislative departments to say in what relations any other country stands toward it. Courts of justice can not make the decision." Lehigh Valley R. Co. v. State of Russia, supra, p. 399.

[fol. 43] "It is also settled law that allegations in a pleading tending to show that a government is sovereign in character are not conclusive on demurrer, but that the court

is bound to take judicial notice of the fact as it exists in reality. To enable it to correctly determine the fact, the courts may have recourse to such sources of information as they deem most trustworthy. Russian Socialist Federated Soviet Republic v. Cibrario, 198 App. Div. 869, 191 N. Y. Supp. 543.

"The Soviet Government of Russia has never been recognized by our Government; hence we may not ascribe any of the attributes of sovereignty to it. It follows that all the acts of that Government in contemplation of American courts are ineffective, without consent of the parties concerned, to create, transfer, or nullify legal obligations. So far as the defendant seeks to deduce such legal consequences from the decrees and activities of the Soviet Government, its defense is insufficient." Sokoloff v. National City Bank, supra, p 358.

"Not only are the courts bound to take judicial notice of public matters, as before stated, which bear upon the question of our recognition of foreign sovereignties, but they have the right, where they are in doubt as to the facts, to call upon the Department of State for the necessary information." Russian Socialist Federated Soviet Government v. Cibrario et al., supra, p. 547.

This court must take judicial notice of the fact that recognition has been denied by the Executive and the State Department to the Union of Soviet Socialist Republics in Russia. The right given an alien to sue the United States in section 155 of the Judicial Code, supra, is a great privilege —one arising out of comity between nations. We must conclude that Congress, when it granted this great privilege to the subjects "of any government" according reciprocal rights to citizens of the United States, had in mind such governments as may be recognized by the proper authorities of the United States under our well-known polity of government.

Until the Union of Soviet Socialist Republics is so recognized this court has no jurisdiction over the case at bar, except to dismiss it. It is therefore ordered and adjudged that plaintiff's petition be, and the same is hereby, dismissed.

Green, Judge; Moss, Judge; Graham, Judge; and Booth, Chief Justice, concur.

IX. Judgment

[fol. 44] At a Court of Claims held in the City of Washington on the 1st day of April, A. D., 1929, judgment was ordered to be entered as follows:

It is adjudged and ordered that the plaintiff, Russian Volunteer Fleet, is not entitled to recover and its petition is therefore dismissed.

X. Proceedings After Entry of Judgment

On August 30, 1929, the plaintiff by leave of court, on motion made therefor, filed a motion for a new triel.

On November 4, 1929, the court entered the following order on said motion:

Order

It is ordered this 4th day of November, 1929, that the plaintiff's motion for new trial be and the same is overruled.

By the Court.

[fol. 45] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,754. Court of Claims. Term No. 623. Russian Volunteer Fleet, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed February 3, 1930. File No. 34,754.

SUPREME COURT OF THE UNITED STATES

STIPULATION AND ADDITION TO RECORD—Filed Mar. 13, 1930.

It is hereby stipulated and agreed by the petitioner, the Russian Volunteer Fleet Corporation, by its counsel and by the United States, the respondent, by its Assistant Attorney General, that the attached certification of proceedings in this cause in the United States Court of Claims be added to the record on file in the Supreme Court of the United States.

Charles Recht, Horace S. Whitman, Wm. S. Marbury, Jr., Counsel for Petitioner. Charles B. Rugg, Assistant Attorney General, for Respondent.

P. M. C.

COURT OF CLAIMS OF THE UNITED STATES

No. A-69

RUSSIAN VOLUNTEER FLEET

vs.

THE UNITED STATES

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that in the above-entitled cause the plaintiff, on May 22, 1929, filed a motion for an extension of time of sixty (60) days within which to file a motion for a new trial. Said motion was allowed by the court May 24, 1929.

I further certify that the plaintiff, on July 24, 1929, filed a motion to extend the time for filing a motion for new trial to September 1, 1929. Said motion was allowed by the court July 29, 1929.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 12th day of March, A. D., 1930.

F. C. Kleinschmidt, Assistant Clerk, Court of Claims.
(Seal Court of Claims.)

[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 21, 1930

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme Court,
MAR 13 1930
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1929.

No. ~~629~~ 39

RUSSIAN VOLUNTEER FLEET CORPORATION

vs.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

CHARLES RECHT,
HORACE S. WHITMAN,
WILLIAM L. MARBURY, JR.,
Counsel for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1929.

No. 623.

RUSSIAN VOLUNTEER FLEET CORPORATION

vs.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Claims was rendered on April 1, 1929, and has not yet been officially reported. It is printed in the Petition and Transcript of Record (hereinafter cited as "R.") at pages 35-38.

II.

JURISDICTION.

1. Acts, February 13, 1925, c. 229, sec. 3 (b), 43 Stat. at L. 939 (U. S. C., Tit. 28, sec. 288 (b)).

2. The judgment sought to be reviewed was rendered by the Court of Claims on April 1, 1929 (R. p. 39). On May 24, 1929, the Court of Claims allowed a motion extending the time in which a motion for a new trial might

be filed. On July 29, 1929, the time for filing the motion for a new trial was again extended by the Court until September 1, 1929.* Such a motion was duly filed on August 30th and was overruled on November 4, 1929, at which time the judgment became final (R. p. 39). The petition for *certiorari* and exhibit thereto was filed with the Clerk of this Court on February 3, 1930 (R. p. 39).

3. The judgment below finally dismissed the claim of the Petitioner to compensation for property taken by the United States pursuant to Acts, June 15, 1917, c. 29, "Emergency Shipping Fund," 40 Stat. at L. 182. The order of dismissal was based upon a finding that the plaintiff was not entitled to sue the United States in the Court of Claims and that the Court was, therefore, without jurisdiction. The case falls within the plain language of the Acts, February 13, 1925, c. 229, sec. 3 (b), hereinbefore referred to, which provides as follows:

> "In any case in the Court of Claims, including those begun under section 180 of the Judicial Code, it shall be competent for the Supreme Court, upon the petition of either party, whether Government or claimant, to require, by certiorari, that the cause, including the findings of fact and the judgment or decree, but omitting the evidence, be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought there by appeal."

The order of the Court of Claims passed on May 24, 1930, extending the time for the filing of a motion for a new trial deprived the judgment of April 1, 1929, of any finality. By retaining jurisdiction of the case, the Court

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* The facts as to the extension of time for the filing of the motion for a new trial were inadvertently omitted from the Record as originally printed. A stipulation supplementing the Record in this respect, signed by counsel for both parties, has been filed with the Clerk of this Court.

held the case open for further consideration, this being the accepted practice of the Court of Claims followed in numerous cases. The judgment of the Court of Claims being no longer final, the period within which it was necessary to file the petition for *certiorari* did not begin to run until the motion for a new trial was overruled on November 4, 1929. The petition herein was filed within three months thereafter.

4. As to the timeliness of the filing of the petition for writ of *certiorari* see *Morse v. United States*, 270 U. S. [redacted] *Chicago Great Western R. R. Co. v. Basham*, 249 U. S. 164; *Texas & Pacific Railway Co. v. Murphy*, 111 U. S. 488; *Chicago & Alton R. R. Co. v. United States*, 54 Ct. Claims 116; *Clarke v. Eureka County Bank*, 131 Fed. 145.

As to the nature of the case see *United States v. Carver*, 278 U. S. 294; *Sioux Indians v. United States*, 277 U. S. 424.

III.

STATEMENT OF THE CASE.

While the case was fully stated in the petition for *certiorari* (R. pp. 2-5), that statement is for the convenience of the Court repeated here in more concise form with references to the pages of the printed Record.

This suit was brought in the Court of Claims by the Petitioner, a corporation organized and existing under the laws of Russia (R. p. 7) against the United States, to recover the value of two ship-building contracts requisitioned by the United States Shipping Board Emergency Fleet Corporation on August 16, 1917 (R. pp. 11-13). The requisition was made in exercise of the powers conferred upon the President by Acts, June 15, 1917, c. 29, "Emer-

gency Shipping Fund," 40 Stat. at L. 182, and by him delegated to the Fleet Corporation by Executive Order dated July 11, 1917 (R. p. 10). The relevant provisions of that Act are set out in the petition (R. pp. 8-10).

Although the Fleet Corporation at the time of requisitioning the contracts recognized the right of your Petitioner to compensation (R. pp. 11-13) and has since valued that right at the sum of $1,412,532.35 as of March 5, 1920, (R. p. 14), no payment has been made to your Petitioner of said sum or any part thereof (R. pp. 14-15). Your Petitioner not being satisfied with the award made by the Fleet Corporation and having been refused payment of any part thereof, instituted this suit in the Court of Claims on the 23rd day of March, 1921 (R. p. 7). By leave of Court an amended petition was filed on the 16th day of October, 1924 (R. pp. 7-15). For further procedural details, reference is made to the petition for *certiorari* (R. p. 4).

The Court of Claims dismissed this suit for want of jurisdiction before any testimony was taken, the decision being based on the following propositions (R. pp. 35-38):

(1) That the right of the Petitioner to bring this suit is limited by Section 155 of the Judicial Code (U. S. C., Title 28, Sec. 261), which provides as follows:

> "Aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

(2) That the Courts of the United States cannot admit proof of the existence of any foreign Government which the Government of the United States has not "recognized" (i. e., with which the Executive Department has not established diplomatic relations).

(3) That in any event the privilege of suing the United States under Sec. 155 is reserved to citizens of States, the existing Governments of which are "recognized" by the Department of State.

In short, the Court of Claims has held that *because the Petitioner is a corporation organized under the laws of Russia,* it has no standing to maintain this suit against the United States to recover just compensation for its private property, notwithstanding the explicit provision of the Act of Congress under which that property was taken, that suit might be maintained against the United States in the Court of Claims by *any corporation* to recover such compensation (See R. pp. 8-10).

IV.

SPECIFICATION OF ERRORS.

(1) The Court of Claims erred in dismissing the petition for want of jurisdiction.

(2) The Court of Claims erred in holding that the right of your Petitioner to maintain this suit is in any way limited by the provisions of Section 155 of the Judicial Code.

(3) The Court of Claims erred in holding that Section 155 of the Judicial Code properly construed does not authorize a corporation organized under the laws of the State of Russia to maintain suit against the United States in the Court of Claims.

(4) The Court of Claims erred in holding that it was without power to take proof of the existence of a Government in Russia and of the existence of a judicial system providing for the prosecution of claims against such Government.

V.

ARGUMENT.

SUMMARY.

A. The decision below construes the Act of June 15, 1917, in a manner not in harmony with the Fifth Amendment, and is in conflict with applicable decisions of this Court.

B. The holding of the court below that the right of persons whose property is taken under the Act of June 15, 1917, to sue the United States is limited by Section 155 of the Judicial Code, is in conflict with the principles of statutory construction adopted by this court in considering similar legislation.

C. The holding of the court below that the right of aliens to maintain suits against the United States under Section 155 of the Judicial Code is limited to aliens who are citizens of recognized governments, is both novel and of great practical importance, and reads into that section an implied limitation which has never previously been held to exist.

D. The decision below raises novel questions of general municipal law and of public international law, which have never been passed upon by this court, which are of great practical importance, and which were decided by the court below in a manner in conflict with the weight of authority, the decisions of other Federal courts, and with the great weight of scholarly opinion.

A.

THE DECISION BELOW CONSTRUES THE ACT OF JUNE 15, 1917, IN A MANNER NOT IN HARMONY WITH THE FIFTH AMENDMENT AND IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

That the present suit was brought by the Petitioner under the provisions of the Act of June 15, 1917, c. 29, and that the Petitioner is entitled to the benefits of that Act notwithstanding the fact that no payment has ever been made to it by the President, see *Houston Coal Co. v. United States*, 262 U. S. 361; *United States v. McNeil & Sons*, 267 U. S. 302; *United States v. Carver*, 278 U. S. 294.

The Court of Claims held that aliens whose property was taken by the President under the Act of June 15, 1917, are without remedy in the Courts of the United States to recover just compensation for their property so taken, unless they can satisfy the condition of Section 155 of the Judicial Code that similar suits may be brought by citizens of the United States against the Governments of which the aliens in question are citizens, and a further condition, *read into* Section 155 by the Court of Claims, that they are the citizens of recognized Governments.

The Petitioner contends that this construction of the Act of June 15, 1917, is not permissible because, (1) *the Fifth Amendment to the Constitution of the United States forbids it*, and, (2) *the decisions of this Court construing the very legislation in question clearly require the opposite result.*

The Petitioner bases its argument on the guaranty of the Fifth Amendment that private property shall not be taken for public use without payment of just compensation therefor. This guaranty is available to aliens as

well as citizens and is the foundation upon which the construction of any statute authorizing the exercise by the President of the powers of eminent domain must be built.

Wong Wing v. United States, 163 U. S. 228, 242.
Truax v. Raich, 239 U. S. 33, 39.

The President in requisitioning the property of the Petitioner under the provisions of the Act of June 15, 1917, was exercising the power of eminent domain. *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106. That statute must, therefore, be construed in harmony with the Fifth Amendment so that the Petitioner whose property was taken will receive just compensation therefor.

Monongahela Nav. Co. v. United States, 148 U. S. 312;
Seaboard Air Line v. United States, 261 U. S. 299;
Brooks-Scanlon Corp. v. United States, supra;
Phelps v. United States, 274 U. S. 341.

Upon these principles *this very Act* was held to require the payment of interest to persons whose property was taken by the President, although no provision was made in the statute for the payment of such interest. *Brooks-Scanlon Corp. v. United States, supra.* This holding was based squarely on the necessity of construing the statute in such a way as to conform to the guarantees of the Fifth Amendment, and was in direct conflict with the general statute. *The Seaboard Air Line Case, supra,* contains a full discussion of the principles involved.

So here, the Act must be construed in such a manner as to provide just compensation to aliens and citizens

alike. It was error for the Court of Claims to defeat the special intent of that Act to assure just compensation to persons whose property was taken for public use, by reading in the limitations of a general statute passed more than sixty years ago.

A case clearly analogous is *Richmond Screw, etc. Co. v. United States*, 275 U. S. 331. There Congress by the Act of July 1, 1918, c. 114, 40 Stat. 704, 705, prohibited suits for infringement against contractors who were engaged in furnishing war supplies to the Government and undertook to substitute for such liability a remedy by suit against the United States in the Court of Claims. Section 3477 of the Revised Statutes had been held to prohibit suits against the Government by an assignee of a patent for prior infringement. Suit was brought by an assignee against the United States relying on the provisions of the Act of July 1, 1918. Section 3477 was held by the Court of Claims to bar the action. That judgment was reversed by this Court. CHIEF JUSTICE TAFT said (p. 346):

> "It is our duty in the interpretation of federal statutes to reach a conclusion which will avoid serious doubt of their constitutionality. *Phelps v. United States*, 274 U. S. 341. Moreover, we should seek to carry out in our dealing with the Act of 1918 and Revised Statutes 3477 the very important Congressional purpose of the former as already explained, in the promotion of the War, as a special legislative intent. It is our duty to give effect to that special intent although it be not in harmony with a broad purpose manifested in a general statute avoiding assignment of claims against the Government, enacted some eighty years ago. *In re Rouse, Hazard & Co.*, 91 Fed. 96, 100, 101; *Townsend v. Little*, 109 U. S. 504, 512; *Washington v. Miller*, 235 U. S. 422, 428. This is in accord with general rules of interpretation, as shown in these authorities, and recon-

> ciles Section 3477 Revised Statutes and the Act of 1918, if we hold, as we do, that Section 3477 does not apply to the assignment of a claim against the United States which is created by the Act of 1918 in so far as the Act deprives the owner of the patent of a remedy against the infringing private contractor for infringements thereof and makes the Government indemnitor for its manufacturer or contractor in his infringements."

The Court will observe that CHIEF JUSTICE TAFT cited the *Phelps Case, supra,* as controlling authority.

B.

THE HOLDING OF THE COURT BELOW THAT THE RIGHT OF PERSONS WHOSE PROPERTY IS TAKEN UNDER THE ACT OF JUNE 15, 1917, TO SUE THE UNITED STATES IS LIMITED BY SECTION 155 OF THE JUDICIAL CODE, IS IN CONFLICT WITH THE PRINCIPLES OF STATUTORY CONSTRUCTION ADOPTED BY THIS COURT IN CONSIDERING SIMILAR LEGISLATION.

CHIEF JUSTICE TAFT, in the opinion just quoted, did not rely solely on the necessity of construing the Act of Congress in such a manner as not to conflict with the Fifth Amendment, but stated as a separate ground for decision that limitations expressing broad purposes contained in general acts enacted many years ago should not be read into special war legislation in such a manner as to limit its remedial character.

This principle is clearly applicable to the present case. As a result of the war emergency, Congress passed many acts conferring extraordinary powers upon the President to appropriate private property. See *United States v. Pfitsch,* 256 U. S. 547. The powers thus conferred upon the President necessitated special care in providing an adequate remedy for the persons whose property should be thus abruptly requisitioned. Each of the acts in ques-

tion provided such remedies and it has been settled by repeated decisions, that they must be construed in accordance with plain meaning and without regard to general acts which might limit or destroy their efficacy. *United States v. Pfitsch, supra; Nassau Smelting Works v. United States,* 266 U. S. 101; *United States v. Skinner & Eddy Corp.,* 35 Fed. (2d) 889.

There can be no doubt but that the provisions of the Act of June 15, 1917, if considered without regard to the limitations of Section 155 of the Judicial Code, confer upon all aliens the right to sue the United States in the Court of Claims. The Act confers the right upon *any corporation* (See R. pp. 8-10). The Act refers to two sections of the Judicial Code, obviously for the purpose of indicating in what forum suit shall be brought. Those sections do not effect the rights of aliens nor do they refer to any other section which does.

The original acts creating the Court of Claims and conferring its jurisdiction upon them contained similar language which was uniformly construed to permit suit by aliens. (See 10 Stat. at L. 612; 12 Stat. at L. 820.)

Byrnes v. United States, 3 Ct. Clms. 195, 197;
Waltjen's Case, 3 Ct. Clms. 238;
McElhose's Case, 3 Ct. Clms. 240.

These cases gave rise to the passage of the Act of July 27, 1868 (15 Stat. at L. 243), which expressly took away from aliens the authority to sue the United States with a proviso similar to that now found in Section 155 of the Judicial Code. Section 155 is thus seen to be *a limiting act and not an enabling act* and thus not properly applicable to the present case.

C.

THE HOLDING OF THE COURT BELOW THAT THE RIGHT OF ALIENS TO MAINTAIN SUITS AGAINST THE UNITED STATES UNDER SECTION 155 OF THE JUDICIAL CODE IS LIMITED TO ALIENS WHO ARE CITIZENS OF AUTHORIZED GOVERNMENTS, IS BOTH NOVEL AND OF GREAT PRACTICAL IMPORTANCE, AND READS INTO THAT SECTION AN IMPLIED LIMITATION WHICH HAS NEVER PREVIOUSLY BEEN HELD TO EXIST.

The history of Section 155 which has just been expounded, makes it clear that this Act did not confer special privileges on aliens, *but took away from certain classes of aliens privileges which had theretofore been conferred upon them.* Were it not for this provision of Section 155, *any alien* might sue the United States in the Court of Claims on the same footing with a citizen. It is, therefore, erroneous to regard Section 155 in the light of an Act conferring a privilege, to be strictly construed. Yet the Court of Claims, not content with applying Section 155 to suits brought under the Act of June 15, 1917, and thus depriving of just compensation many citizens of foreign States with which the United States is on perfectly amicable terms, insisted upon *reading into* Section 155 *an additional limitation* which has the effect of taking away the remedy of the citizens of any Government not recognized by the Government of the United States.

This ruling manifestly affects the rights of a great part of the civilized world; it reads into the statute a limitation not fairly deducible from its language: it deprives of all judicial remedy, private persons who are *ex hypothesi* without remedy through diplomatic channels; it falls upon friend and foe alike. *It deprives of all remedy against confiscation*, citizens of States with which

we have declined to establish diplomatic relations *because of the confiscatory nature of their laws*—an ironical result.

The decisions of this Court have condemned the practice of importing into an Act of Congress seriously affecting international relations, words which it does not contain.

The Three Friends, 166 U. S. 1, 66.

D.

THE DECISION BELOW RAISES NOVEL QUESTIONS OF GENERAL MUNICIPAL LAW AND OF PUBLIC INTERNATIONAL LAW, WHICH HAVE NEVER BEEN PASSED UPON BY THIS COURT WHICH ARE OF GREAT PRACTICAL IMPORTANCE AND WHICH WERE DECIDED BY THE COURT BELOW IN A MANNER IN CONFLICT WITH THE WEIGHT OF AUTHORITY, THE DECISIONS OF OTHER FEDERAL COURTS, AND WITH THE GREAT WEIGHT OF SCHOLARLY OPINION.

The Court of Claims adopted the contention advanced below that it was without power to admit proof of the existence of any Government in Russia or of any judicial system in that State, for the reason that official diplomatic relations had not been established between our Government and the Soviet Regime. That decision is inconsistent with another decision of the same Court, *Rossia Ins. Co. v. United States,* 58 Ct. Clms. 180; it conflicts with a recent decision of another Federal Court, *Banque de France v. Equitable Trust Co.,* 33 Fed. (2d) 202; and it is in conflict with the well considered cases, here and abroad.

Wulfsohn v. R. S. F. S. R., 234 N. Y. 372;
Sokoloff v. National City Bank, 239 N. Y. 158;

Russian Reinsurance Co. v. Stoddard, 240 N. Y. 149;
Dougherty v. Equitable Life Ass. Soc., 236 N. Y. S. 673;
Perry v. Equitable Life Ass. Soc., 45 T. L. R. 468.

The State Department has itself repeatedly referred to the Soviet Regime and has characterized it as "*the regime now functioning in Russia.*" See letter from Secretary HUGHES to Mr. Lindley M. Garrison set forth in *Russian Government v. Lehigh Valley R. R. Co.*, 293 Fed. 135, at page 137.

Moreover the decision below is in conflict with the great weight of scholarly opinion. We cite only a few of the recent monographs discussing the principles of law involved in this case.

Hervey, *Legal Effects of Recognition in International Law*, (1929);
Dickinson, *The Unrecognized Government or State in English and American Law*, 22 Mich. L. R. 29;
Fraenkel, *The Juristic Status of Foreign States, etc.*, 25 Col. L. R. 544;
Connick, *The Effect of Soviet Decrees in American Courts*, 34 Yale, L. J. 499;
Houghton, *The Validity of The Acts of Unrecognized Governments, etc.*, 13 Minn. L. R. 216.
35 Harvard, L. R. 607, 768; 37 Id. 606; 38 Id. 816, 832; 39 Id. 127; 41 Id. 102; 35 Yale L. J. 98, 150, at 155; 30 Col. L. R. 226 (Feb. 1930).

These selected citations are sufficient to indicate the novelty and importance of the questions involved.

CONCLUSION.

The policy of the Government of the United States not to recognize any Government, regardless of its stability, which does not conduct itself in accordance with our accepted standards of international behavior, necessarily leads to the result, that from time to time, large areas of the civilized world are under the control of governments with which our Government has not established diplomatic relations. This policy has been consistently pursued for a great many years and there is no indication that it will be abandoned in the future. Thus the construction placed upon Section 155 of the Judicial Code by the Court of Claims is extremely far reaching in scope.

But the alternative ground upon which the Court of Claims based its decision, to wit, the theory that the Court must assume that there is no government in Russia, and that private rights of citizens of unrecognized states are unenforcible in our courts, is even more sweeping in its effect. Yet the refusal of the Court below to permit your petitioner to establish proof of the existence of judicial remedies against the present Government of Russia or against the Kerensky Government, was apparently based on that principle.

It is, therefore, respectfully submitted that a writ of certiorari should be granted and that this Court should review the judgment of the Court of Claims for the reasons heretofore advanced which may be epitomized as follows:

1. Because the decision below leaves your Petitioner, whose property has been taken by the United States for public use, without remedy for what thereby becomes an act of confiscation.

2. Because the decision below defeats the guarantees of the Fifth Amendment and the express purpose of Congress as set forth in the Act authorizing the taking, that just compensation be paid for all private property thus appropriated.

3. Because the decision below deprives the citizens of states not controlled by governments having diplomatic relations with the Government of the United States, of all remedy for past, and all protection against future appropriation by the United States of their private property.

4. Because the decision below enunciates a doctrine which would place completely beyond the domain of law, the private rights of all citizens of states controlled by governments not enjoying diplomatic relations with the Government of the United States.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, ~~1929~~. 1930.

No. ~~623~~.39.

RUSSIAN VOLUNTEER FLEET, PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF FOR PETITIONER.

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ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF FOR PETITIONER.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Claims was rendered on April 1, 1929, and has not yet been officially reported. It is printed in the Petition and Transcript of Record at pp. 35-38.

II.

JURISDICTION.

This suit was brought in the Court of Claims by the petitioner against the United States to recover the value of two contracts, requisitioned by the United States Shipping Board Emergency Fleet Corporation on August 16,

1917, in the exercise of the powers conferred upon the President by Acts, June 15, 1917, c. 29, "Emergency Shipping Fund," 40 Stat. at L. 182, and by him delegated to the Fleet Corporation by executive order dated July 11, 1917. The case is here on writ of certiorari, granted by this Court on April 21, 1930 (R., p. 41), pursuant to the express provisions of U. S. C. Tit. 28, Sec. 288 (b) (Acts, February 13, 1925, c. 229, Sec. 3, (b), 43 Stat. at L. 939).

The judgment below was rendered on April 1, 1929, finally dismissing the petition (R., p. 39). A motion for a new trial was duly filed and was overruled on November 4, 1929 (R., pp. 39-40). The petition for a writ of certiorari was filed on February 3, 1930 (R., p. 39).

The case falls within the express provision of the statute authorizing this Court to review on certiorari, final judgments of the Court of Claims. *United States v. Carver*, 278 U. S. 294. Reference is also made to the brief heretofore filed on behalf of the petitioner in support of the writ of certiorari.

III.

STATEMENT OF THE CASE.

The petitioner has been since 1917 and is now a corporation organized and existing under the laws of Russia (R., pp. 7, 15).

On August 16th, 1917, the United States Shipping Board Emergency Fleet Corporation requisitioned from the petitioner contracts for the building of two vessels then under construction at the yards of the Standard

Shipbuilding Company in New York, of which contracts the petitioner was then assignee for value (R., pp. 11-13). The requisition was made in the exercise of the powers conferred upon the President by Acts, June 15, 1917, c. 29, "Emergency Shipping Fund," 40 Stat. at L. 182, and by him delegated to the Fleet Corporation by executive order dated July 11th, 1917 (R., p. 10). The relevant provisions of the Act were set forth in the petition filed in the Court below (R., pp. 8-10), and are as follows:

> "The President is hereby authorized and empowered within the limits of the amounts herein authorized * * *
>
> (b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.* * *
>
> (e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed or any part thereof, or charter of such ship. * * *
>
> Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sums as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time; Provided, that all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation or contractor.

The word 'ship' shall include any boat, vessel, or submarine and the parts thereof."

Although the Fleet Corporation at the time of requisitioning the contracts, recognized the right of your petitioner to compensation (R., pp. 11-13), and has since valued that right at the sum of $1,412,532.35, as of March 5th, 1920 (R., p. 14), no payment has been made to your petitioner of said sum or any part thereof (R., pp. 14-15). The petitioner not being satisfied with the amount of the award made by the Fleet Corporation, and having been refused payment of any part thereof, instituted this suit in the Court of Claims on the 23rd day of March, 1921 (R., p. 7). By leave of Court an amended petition was filed on the 16th day of October, 1924, which contains a full statement of all of the facts in connection with the acquisition by the petitioner of the contracts in question, and their appropriation by the Fleet Corporation (R., pp. 7-33).

No answer to this petition was ever filed on behalf of the United States (R., p. 33), and after the time in which to file such an answer had expired, the petitioner moved for the issuance of commissions to take testimony abroad on certain interrogatories (R., p. 34). Upon objection made by the United States, this motion was overruled (R., p. 34). Thereupon the petitioners served notice upon the United States of its intention to take certain depositions (R., p. 34). To this the United States replied by a motion to quash the notice on the ground that the Court of Claims was without jurisdiction to entertain this suit (R., pp. 34-35). This motion was argued and thereafter a final order was entered dismissing the petition (R., p. 39). A motion for a new trial was filed and overruled (R., p. 39).

In support of its order dismissing the petition, the Court of Claims filed an opinion in which the following propositions were advanced (R., pp. 35-38):

(1) That the right of the petitioner to bring this suit is limited by Section 155 of the Judicial Code (U. S. C., Title 28, Sec. 261), which provides as follows:

> "Aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

(2) That the Courts of the United States cannot admit proof of the existence of any foreign government which

the government of the United States has not "recognized" (i. e., with which the Executive Department has not established diplomatic relations).

(3) That in any event the privilege of suing the United States under Section 155 is reserved to citizens of States, the existing governments of which are "recognized" by the Department of State.

In short, the Court of Claims has held that *because the petitioner is a corporation organized under the laws of Russia,* it has no standing to maintain this suit against the United States to recover just compensation for its private property, notwithstanding the explicit provision of the Act of Congress under which that property was taken, that suit might be maintained against the United States in the Court of Claims by *any corporation* to recover such compensation.

IV.

SPECIFICATIONS OF ERRORS.

(1) The Court of Claims erred in dismissing the petition for want of jurisdiction.

(2) The Court of Claims erred in holding that the right of your petitioner to maintain this suit is in any way limited by the provisions of Section 155 of the Judicial Code.

(3) The Court of Claims erred in holding that Section 155 of the Judicial Code properly construed does not authorize a corporation organized under the laws of the State of Russia to maintain suit against the United States in the Court of Claims.

(4) The Court of Claims erred in holding that it was without power to take proof of the existence of a government in Russia and of the existence of a judicial system providing for the prosecution of claims against such government.

V.

ARGUMENT.

SUMMARY.

A. The petitioner is a juristic person with capacity to sue.

B. This suit is properly brought under the Act of June 15, 1917.

C. The right to sue the United States under the Act of June 15, 1917, is not limited by the provisions of Section 155 of the Judicial Code.

(1) The Act must be so construed as to harmonize with the Fifth Amendment.

(2) The Act must be so construed as to harmonize with the principles of statutory construction adopted by this Court in considering similar legislation.

D. Section 155 of the Judicial Code does not limit the right to sue the United States to citizens of recognized governments.

E. If petitioner's right is dependent upon Section 155 of the Judicial Code, petitioner should be permitted to establish as a matter of fact that the present Russian Government allows suits to be brought against it by citizens of the United States.

A.

THE PETITIONER IS A JURISTIC PERSON WITH CAPACITY TO SUE.

The petition filed in the Court of Claims shows that the Russian Volunteer Fleet "is a corporation duly organized under, and by virtue of, the Laws of Russia" (R., p. 7). Paragraph 12 of the petition further alleges that "your petitioner at all times has been a citizen of Russia * * *" (R., p. 15). No point was taken in the Court below that the petitioner was not a juristic person with capacity to sue, nor was any such proposition laid down in the opinion filed in support of the order dismissing the petition. As the case now stands, therefore, no such question is presented to this Court for consideration.

But in any event the point seems to be one of little difficulty. The record shows that the United States dealt with the petitioner as a legal entity and as owner of the property here involved. (See correspondence, R., pp. 11-13). Moreover, on March 5, 1920, a finding was made "that just compensation to the Russian Volunteer Fleet on account of the requisitioning of hulls Nos. 6 and 7 under construction by the Standard Steamboat Corporation in accordance with Requisition Order dated August 3, 1917, be and it is hereby fixed at * * * a total of $1,412,532.35" (R., p. 14). Since that time the United States Government has had numerous dealings with the Russian Volunteer Fleet as such and has even brought suit against the corporation. See *United States v. Russian Volunteer Fleet*, 22 F. (2d) 187.

It has been suggested that the Department of State has recognized the overthrow of the Provisional Government of Russia which succeeded to power at the time of the revolution in 1917, and that this carries with it the extinction of the corporate existence of the petitioner. To this it may be answered that the Department of State still recognizes the representative of that government as the accredited representative of the State of Russia.

But apart from this, it is clear that the overthrow of a government does not carry with it the extinction of private rights. On the contrary, this Court has always held that the great body of municipal law regulating private and domestic rights is presumed to continue in full force and effect until abrogated or changed by the act of a succeeding government, the sovereignty of which is recognized by the Government of the United States. *Vilas v. Manila,* 220 U. S. 345.

That the overthrow of a government does not destroy the State is made clear by the decision of this Court in the case of *Texas v. White,* 7 Wallace, 700, and the continued existence of the State of Russia has been clearly recognized in the recent Lehigh Valley Railroad Company litigation. *Russian Government v. Lehigh Valley R. Co.,* 293 Fed. 133; 293 Fed. 135; Writ of Prohibition denied, 265 U. S. 573; *Lehigh Valley R. R. Co. v. State of Russia,* 21 Fed. (2d) 396; Writ of Certiorari denied, 275 U. S. 571. In those cases it was held that suit could be filed in the courts of the United States on behalf of the State of Russia, notwithstanding the apparent recognition by the Department of State of the fact that the Provisional Government had fallen. The courts

emphasized the distinction between the State of Russia which continues to exist, and the government which has fallen. This recognition of the continued existence of the State carries with it those private rights such as title to real property, corporate existence, etc., which are not necessarily involved in the fall of the government.

It so happens that in this case the petitioner has alleged its continued existence as a corporation under the laws of the Soviet Government, but even were the fact otherwise, as in those cases where the Soviet Government has attempted to destroy the corporate entity, the continued existence of the corporation for the purpose of bringing suit to collect its assets would be presumed by the courts of the United States, in the absence of recognition by the Government of the United States of the validity of the decrees of the Soviet Government. *Petrogradsky W. K. Bank v. Nat. City Bank,* 253 N. Y. 23 (1930); *Russian C. & I. Bank v. Comptoir d'Escompte de Mulhouse,* (1925) A. C. 112, (1923) 2 K. B. 630; *Banque, etc. v. Goukassow,* (1925) A. C. 150, (1923) 2 K. B. 682.

B.

THIS SUIT IS PROPERLY BROUGHT UNDER THE ACT OF JUNE 15, 1917.

The petition in this case is filed pursuant to the provisions of Acts June 15, 1917, c. 29 heretofore quoted. The act specifically provides that any person who is dissatisfied with the amount of just compensation awarded to him, "shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further

sums as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor * * * " (R., p. 9).

In this case the Board of Trustees of the Fleet Corporation acting on behalf of the President made an award but attached thereto the condition "that payment of said just compensation and refund of progress payments to the Russian Volunteer Fleet be withheld pending advice from the Department of State as to how and to whom said money shall be paid." The award further authorized the Comptroller to make payment "to whomsoever the Department of State shall designate as properly and legally entitled thereto" (R., p. 14). Naturally, the Department of State refused to make any such designation and hence, as is alleged in paragraph 11 of the petition, the petitioner has received no part of the amount awarded to it (R., p. 15).

Even though no payment has been made to the petitioner, it is clear under the decisions of this Court, that the remedy provided in the act is broad enough to cover this case. Similar suits have been entertained under this very act, *United States v. Carver*, 278 U. S. 294, and under cognate legislation. *Seaboard Air Line v. United States*, 261 U. S. 299; *Houston Coal Co. v. United States*, 262 U. S. 361; *United States v. McNeil & Sons*, 267 U. S. 302. In the *McNeil Case* the contention was expressly made that the remedies under the act were available only after determination by the President of the value of the property taken, expression of dissatisfaction by the owner, and payment of seventy-five per centum of the de-

termined amount. This Court, speaking through Mr. Justice McReynolds, said (p. 307)

> "Jurisdiction was invoked under the Lever Act. The claim is for something alleged to have been commandeered or requisitioned by the President, as provided by Section 10, and this section confers jurisdiction without qualification upon district courts to hear and determine controversies directly resulting from such action. *Houston Coal Co. v. United States*, 262 U. S. 361, 365.
>
> The allegations of the complaint were sufficient to set out a substantial claim under a federal statute. Accordingly, there was jurisdiction in the court to pass upon the questions so presented. *Binderup v. Pathe Exchange*, 263 U. S. 291, 305."

C.

THE RIGHT TO SUE THE UNITED STATES UNDER THE ACT OF JUNE 15TH, 1917, IS NOT LIMITED BY THE PROVISIONS OF SECTION 155 OF THE JUDICIAL CODE.

The Court of Claims held that aliens whose property was taken by the President, under the Acts of June 15th, 1917, c. 29, are without remedy in the courts of the United States to recover just compensation for their property so taken, unless they can satisfy the condition of Section 155 of the Judicial Code that similar suits may be brought by citizens of the United States against the government of which the aliens in question are citizens, and a *further* condition, *read into* Section 155 by the Court of Claims, that they are the citizens of recognized governments.

The petitioner contends that this construction of the Act of June 15, 1917, is not permissible under the decisions of this Court construing the very legislation in question.

(1) The Act Must Be So Construed As To Harmonize With the Fifth Amendment.

Manifestly this Court will not construe the Act of June 15th, 1917, in such a way as to raise doubts as to its constitutionality. If, therefore, the act, as construed by the Court of Claims, conflicts with the provisions of the Fifth Amendment of the Constitution of the United States, the construction will be rejected unless absolutely required by the plain language of the statute.

It is submitted that there can be little doubt of the invalidity of this statute as construed by the Court of Claims. The President, in requisitioning the property of the petitioner under the provisions of the act, is exercising the power of eminent domain. If the act is so construed as to deny just compensation to persons whose property is thus taken, it would be unconstitutional. In *Brooks-Scanlon Corp. v. U. S.*, 265 U. S. 106, this Court had before it the very legislation here involved. In discussing the amount to which the petitioner in that case was entitled, this Court speaking through Mr. Justice BUTLER said (p. 123):

> "The contract rights of claimant taken are to be distinguished from its expenditures for the production of the ship. The value of property may be greater or less than its cost; and this is true of contract rights and other intangibles as well as of physical things. It is the property and not the cost of it that is protected by the Fifth Amendment. *Minnesota Rate Cases*, 230 U. S. 352, 454. By the taking, the claimant lost and the United States obtained the right to have the completed ship delivered to it on or before February 1, 1918, upon payment of the instalments remaining to be paid under the contract. It is settled by the decisions of this Court that just compensation is the value of the property taken at

the time of the taking. *Vogelstein & Co. v. United States*, 262 U. S. 337, 340; *United States v. New River Collieries Co.*, 262 U. S. 341, 344; *Seaboard Air Line Ry. Co. v. United States*, 261 U. S. 299, 306; *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 341. And, if the taking precedes the payment of compensation, the owner is entitled to such addition to the value at the time of the taking as will produce the full equivalent of such value paid contemporaneously. Interest at a proper rate is a good measure of the amount to be added. *Seaboard Air Line Ry. Co. v. United States, supra; United States v. Benedict*, 261 U. S. 294, 298; *Brown v. United States*, 263 U. S. 78.

"Claimant insists that just compensation is the value of the contract and its rights and interests thereunder, and is measured by the difference between the value of the ship, as found by the court, at the time of the taking and on the date specified for delivery, and the amount which claimant was then required under the contract to pay in order to get the ship.

"We think it not permissible so to calculate compensation. It is the sum which, considering all the circumstances—uncertainties of the war and the rest—probably could have been obtained for an assignment of the contract and claimant's rights thereunder; that is, the sum that would in all probability result from fair negotiations between an owner who is willing to sell and a purchaser who desires to buy."

The underlying principles are fully explained in *Seaboard Air Line v. United States*, 261 U. S. 299, where it was held that the railroad was entitled to interest on the value of property requisitioned by the President under authority of Section 10 of the Lever Act, Acts, August 10, 1917, c. 53, 40 Stat. at L. 276, notwithstanding the fact that the statute failed to make provision for such inter-

est. This Court, speaking through Mr. Justice BUTLER, said (p. 304):

"The rule is that, in the absence of a stipulation to pay interest or a statute allowing it, none can be recovered against the United States upon unpaid accounts or claims. *United States v. Rogers,* 255 U. S. 163, 169; *United States v. North American Transportation & Trading Co.,* 253 U. S. 330; *United States v. North Carolina,* 136 U. S. 211, 216; *Angarica v. Bayard,* 127 U. S. 251, 260; *Harvey v. United States,* 113 U. S. 243.

"Section 10 of the Lever Act authorizes the taking of property for the public use on payment of just compensation. There is no provision in respect of interest. Just compensation is provided for by the Constitution and the right to it cannot be taken away by statute. Its ascertainment is a judicial function. *Monongahela Navigation Co. v. United States,* 148 U. S. 312, 327.

"The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. *Monongahela Navigation Co. v. United States,,* 148 U. S. 312, 327. It rests on equitable principles and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. *United States v. Rogers* (C. C. A., Eighth Circuit), 257 Fed. 397, 400. He is entitled to the damages inflicted by the taking. *Northern Pacific Ry. Co. v. North American Telegraph Co.* (C. C. A., Eighth Circuit), 230 Fed. 347, 352, and cases there cited.

"The United States in effect claims that the owner is entitled to no more than the value of the land, as of date of taking, to be paid at a later time, when ascertained. The owner has been deprived of the land and its use since the taking, May 23, 1919. The value of the property, as ascertained by the President, was $235.80, and this was allowed with interest

from date of taking. But as judicially determined later, the value when taken was $6,000.

"The owner's right does not depend on contract, express or implied. A promise to pay is not necessary. None is alleged. This suit is a part of the authorized procedure initiated by the United States for the condemnation of the land. The owner was not satisfied with the amount fixed by the President and sued. A necessary condition of the taking is the ascertainment and payment of just compensation. *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 337; *Searl v. School District, Lake County*, 133 U. S. 553, 562; *United States v. Jones*, 109 U. S. 513, 518, et seq.; *United States v. Sargent*, 162 Fed. 81, 83. It is not suggested in this case that the provisions of Section 10 of the Lever Act do not meet the constitutional requirement. The only question here is whether payment at a subsequent date of the value of the land as of the date of taking possession is sufficient to constitute just compensation."

• • • • •

"It is obvious that the owner's right to just compensation cannot be made to depend upon state statutory provisions. The Constitution safeguards the right and Section 10 of the Lever Act directs payment. The rule above referred to, that in the absence of agreement to pay or statute allowing it the United States will not be held liable for interest on unpaid accounts and claims, does not apply here. The requirement that 'just compensation' shall be paid is comprehensive and includes all elements and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation. Where the United States condemns and takes possession of land before ascertaining or paying compensation, the owner is not limited to the value of the property at the time of the taking; he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking. Interest at a proper rate is a good

measure by which to ascertain the amount so to be added."

See also:

Phelps v. United States, 274 U. S. 341.

So here, the Act of June 15, 1917, may be construed in such a manner as to provide just compensation to aliens and citizens alike. There can be no question that an alien is entitled to the protection of the Fifth Amendment, regardless of his citizenship. Under the Constitution of the United States the property of no person may be taken for public use without the payment of just compensation therefor.

Wong Wing v. United States, 163 U. S. 228, 242.

Truax v. Raich, 239 U. S. 33, 39.

The Court will recall that the United States did not oppose the granting of the writ of certiorari in this case. However, in the brief of the Attorney General, it was somewhat hesitantly suggested that a judicial remedy might not be necessary to gratify the requirements of the Fifth Amendment. This would seem to conflict with the statement in the *Seaboard Air Line Cases, supra,* that "just compensation is provided for by the Constitution, and the right to it cannot be taken away by statute. *Its ascertainment is a judicial function.*" In any event the petitioner in this case, if he be without judicial remedy, is manifestly without any remedy at all. Clearly there can be no representations made on his behalf through diplomatic channels.

Finally it is submitted that the case is governed by the recent decision of this Court in *Richmond Screw Anchor Co. v. United States*, 275 U. S. 331. There Congress, by the Act of July 1, 1918, c. 114, 40 Stat. at L. 704-5, prohibited suits for infringement of patents against contractors who were engaged in furnishing war supplies to the government, and undertook to substitute for such liability a remedy by suit against the United States in the Court of Claims. Prior to that time, Section 3477 of the Revised Statutes had been held to prohibit suits against the government by an assignee of a patent for prior infringement. Suit was brought by an assignee against the United States, relying on the provisions of the Act of July 1, 1918. Section 3477 was held by the Court of Claims to bar the action. That judgment was reversed by this Court. Chief Justice TAFT said (p. 344) (italics ours):

> "It is settled that, but for the Act of 1918 the two assignments vesting title in the Anchor Company would enable it to recover from the contractor for all his infringements (*Crown Die & Tool Co. v. Nye Tool & Machine Works, supra; Gordon v. Anthony*, 16 Blatchf. 234, Fed. Cas. No. 5,605; *Waterman v. Mackenzie*, 138 U. S. 252, 256, 261; *Galer v. Wilder*, 10 How. 476, 494; *Robinson on Patents*, vol. 3, sec. 937, p. 122). If now section 3477 applies and these assignments are rendered void, the effect of the Act of 1918 is to take away from the assignee and present owner not only the cause of action against the Government, but also to deprive it of the cause of action against the infringing contractor for injury by his infringement. The intention and purpose of Congress in the Act of 1918 was to stimulate contractors to furnish what was needed for the War, without fear of becoming liable themselves for infringements to inventors or the owners or assignees of patents.

The letter of the Assistant Secretary of the Navy upon which the Act of 1918 was passed, leaves no doubt that this was the occasion for it. To accomplish this governmental purpose, Congress exercised the power to take away the right of the owner of the patent to recover from the contractor for infringements. This is not a case of a mere declared immunity of the Government from liability for its own torts. It is an attempt to take away from a private citizen his lawful claim for damage to his property by another private person which but for this Act he would have against the private wrongdoer. *This result, if* 3477 *Rev. Stats. applies and avoids the assignment, would seem to raise a serious question as to the constitutionality of the Act of* 1918 *under the Fifth Amendment to the Federal Constitution. We must presume that Congress in the passage of the Act of* 1918 *intended to secure to the owner of the patent the exact equivalent of what it was taking away from him.* It was taking away his assignable claims against the contractor for the latter's infringement of his patent. The assignability of such claims was an important element in their value and a matter to be taken into account in providing for their just equivalent. If section 3477 applied, such equivalence was impossible.

"It is our duty in the interpretation of federal statutes to reach a conclusion which will avoid serious doubt of their constitutionality. *Phelps v. United States*, 274 U. S. 341. Moreover we should seek to carry out in our dealing with the Act of 1918 and Revised Statutes 3477 the very important Congressional purpose of the former, as already explained, in the promotion of the War, as a special legislative intent. *It is our duty to give effect to that special intent although it be not in harmony with a broad purpose manifested in a general statute avoiding assignment of claims against the Government, enacted some eighty years ago. In re Rouse, Hazard & Co.*, 91 Fed. 96, 100, 101; *Townsend v. Little*, 109 U. S. 504, 512; *Washington v. Miller*, 235 U. S. 422,

428. This is in accord with general rules of interpretation, as shown in these authorities, and reconciles section 3477 Revised Statutes and the Act of 1918, if we hold, as we do, that section 3477 does not apply to the assignment of a claim against the United States which is created by the Act of 1918 in so far as the Act deprives the owner of the patent of a remedy against the infringing private contractor for infringements thereof and makes the Government indemnitor for its manufacturer or contractor in his infringements."

(2) The Act Must Be So Construed As To Harmonize With The Principles Of Statutory Construction Adopted By This Court In Considering Similar Legislation.

It will be noted that Chief Justice TAFT, in delivering the opinion in the *Richmond Co. Case, supra,* did not rely solely on the necessity of construing legislation in such a manner as not to conflict with the Fifth Amendment, but stated as a separate ground for decision that limitations expressing broad purposes contained in general acts enacted many years ago, should not be read into special war legislation in such a manner as to limit its remedial character.

This principle is clearly applicable to the present case. As a result of the war emergency, Congress passed many acts conferring extraordinary powers upon the President to appropriate private property. See *United States v. Pfitsch,* 256 U. S. 547, 553. The powers thus conferred upon the President necessitated special care in providing an adequate remedy for the persons whose property should be thus abruptly requisitioned. Each of the acts in question provided such remedies and it has been settled by repeated decisions, that they must be construed in accordance with plain meaning and without regard to gen-

eral acts which might limit or destroy their efficacy. *United States v. Pfitsch, supra; Nassau Smelting Works v. United States,* 266 U. S. 101; *United States v. Skinner & Eddy Corp.,* 35 Fed. (2d) 889.

There can be no doubt but that the provisions of the Act of June 15, 1917, if considered without regard to the limitations of Section 155 of the Judicial Code, confer upon all aliens the right to sue the United States in the Court of Claims. The Act confers the right upon *any corporation* (See R., pp. 8-10). The Act refers to two sections of the Judicial Code, obviously for the purpose of indicating in what forum suit shall be brought. Those sections do not affect the rights of aliens nor do they refer to any other section which does.

Under the original Act establishing the Court of Claims (10 Stat. at L. 612), the right of aliens to sue the United States was recognized, although there was no provision specifically authorizing such suit. The question as to the right of an alien to sue seems first to have been raised in connection with suits brought under the provisions of The Abandoned and Captured Property Act (12 Stat. at L. 820). The first case presenting that point was *Byrnes v. United States,* 3 Ct. Clms. 195, where the Court said (p. 197):

> "Neither is there anything in the Act which limits its benefits to those who are citizens of the United States. It does not require that the claimant should be a citizen but allows 'any person' whose property has been seized and sold to avail himself of the remedy it gives."

See also:

Waltjen's Case, 3 Ct. Clms. 238.
McElhose's Case, 3 Ct. Clms. 240.

These cases gave rise to the passage of the Act of July 27th, 1868 (15 Stat. at L. 243), which expressly took away from aliens the right to sue the United States, with the proviso that

> "This section shall not be construed so as to deprive aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, of the privilege of prosecuting claims against the United States in the court of claims as now provided by law."

This proviso found its way into the Revised Statutes as Section 1068, which, without change, became Section 160, now 155, of the Judicial Code (see Congressional Record, Vol. 46, p. 945). It will thus be seen that Section 155 of the Judicial Code, like Section 3477 of the Revised Statutes discussed in the *Richmond Co. Case, supra,* is *a limiting act,* taking way rights theretofore conferred upon aliens, and is *not an enabling act* as the Court of Claims seems to have supposed.

Section 155, therefore, is a limitation expressing a broad purpose, enacted many years ago, and should not be read into the Act of 1917 in such a manner as to limit its remedial character.

D.

SECTION 155 OF THE JUDICIAL CODE DOES NOT LIMIT THE RIGHT TO SUE THE UNITED STATES TO CITIZENS OF RECOGNIZED GOVERNMENTS.

The history of Section 155 which has just been expounded, makes it clear that this Act did not confer special privileges on aliens, *but took away from certain classes of aliens privileges which had theretofore been conferred upon them.* Were it not for this provision of Section 155, *any alien* might sue the United States in the Court of Claims on the same footing with a citizen. It is, therefore, erroneous to regard Section 155 in the light of an Act conferring a privilege, to be strictly construed. Yet the Court of Claims, not content with applying Section 155 to suits brought under the Act of June 15, 1917, and thus depriving of just compensation many citizens of foreign States with which the United States is on perfectly amicable terms, insisted upon *reading into* Section 155 *an additional limitation* which has the effect of taking away the remedy of the citizen of any Government not recognized by the Government of the United States.

This ruling manifestly affects the rights of a great part of the civilized world; it reads into the statute a limitation not fairly deducible from its language; it deprives of all judicial remedy, private persons who are *ex hypothesi* without remedy through diplomatic channels; it falls upon friend and foe alike. *It deprives of all remedy against confiscation,* citizens of States with which we have declined to establish diplomatic relations *because of the confiscatory nature of their laws*—an ironical result.

The decisions of this Court have condemned the practice of importing into an Act of Congress seriously affecting international relations, words which it does not contain. In the *Three Friends*, 166 U. S. 1, a vessel was forfeited to the United States under Section 5283 of the Revised Statutes, authorizing the forfeiture of any vessel fitted out or armed with the intent that it should be employed in the service of any foreign people, or to cruise or commit felonies against the subjects, citizens or property of any foreign people with whom the United States are at peace. The vessel in question was alleged to have been furnished, fitted out, and armed with intent to employ it in the service of certain people engaged in armed resistance to the Spanish government in the Island of Cuba. The Government of the United States had not recognized the belligerency of the Cuban insurrectionaries and the proposition was advanced that in the absence of such recognition the statute did not apply. Mr. Chief Justice FULLER, speaking for this Court, said (pp. 63-64, 65-66):

> "Belligerency is recognized when a political struggle has attained a certain magnitude and affects the interests of the recognizing power; and in the instance of maritime operations, recognition may be compelled, or the vessels of the insurgents, if molesting third parties, may be pursued as pirates. *The Ambrose Light*, 25 Fed. Rep. 408; 3 Whart. Dig. Int. Law, Sec. 381; and authorities cited.
>
> "But it belongs to the political department to determine when belligerency shall be recognized and its action must be accepted according to the terms and intention expressed.
>
> "The distinction between recognition of belligerency and recognition of a condition of political re-

volt, between recognition of the existence of war in a material sense and of war in a legal sense, is sharply illustrated by the case before us. For here the political department has not recognized the existence of a *de facto* belligerent power engaged in hostility with Spain, but has recognized the existence of insurrectionary warfare prevailing before, at the time and since this forfeiture is alleged to have been incurred.

"We are thus judicially informed of the existence of an actual conflict of arms in resistance of the authority of a government with which the United States are on terms of peace and amity, although acknowledgment of the insurgents as belligerents by the political department has not taken place; and it cannot be doubted that, this being so, the act in question is applicable.

"We see no justification for importing into section 5283 words which it does not contain and which would make its operation depend upon the recognition of belligerency; and while the libel might have been drawn with somewhat greater precision, we are of opinion that it should not have been dismissed."

E.

IF PETITIONER'S RIGHT IS DEPENDENT UPON SECTION 155 OF THE JUDICIAL CODE PETITIONER SHOULD BE PERMITTED TO ESTABLISH AS A MATTER OF FACT THAT THE PRESENT RUSSIAN GOVERNMENT ALLOWS SUITS TO BE BROUGHT AGAINST IT BY CITIZENS OF THE UNITED STATES.

Assuming that Section 155 of the Judiciary Code applies to this action, it is incumbent on petitioner to prove as a matter of fact that the government of which it is a citizen "accords to citizens of the United States the right to prosecute claims against such government in its courts." While, of course, it is logically necessary to such proof that a government exists of which petitioner be a citizen, nevertheless, *it is not the existence of such government which is the issue to be established, but the rights allowed in the courts of such government to citizens of the United States.*

This distinction is emphasized because the failure to grasp the same seems responsible for the decision in the Court below. The Court of Claims seemed to believe that to allow this suit to continue would require a judicial determination that the Union of Soviet Socialist Republics was the government of Russia. It was assumed that this could not be done without infringing upon the rights of the State Department. Obviously a judicial determination that the Soviet Government is the government of Russia might in some cases infringe upon the prerogative of the State Department. It would do so if the issue before the Court were concerning the sovereign acts of such government and the existence of the government as

a sovereign entity were called upon in order to validate such acts.

However, a judicial determination that there was in fact a government in Russia known as the Union of Soviet Socialist Republics and that such government as a matter of fact carried on the ordinary functions of any civilized government, is not in the least an infringement upon the prerogatives of the State Department.

Numerous authorities exist which have made this distinction clear and which have pointed out that *where no question of sovereignty as such is involved,* the Court may consider the actual facts.

In this Court the matter was first discussed by Chief Justice MARSHALL in *United States v. Palmer,* 3 Wheaton 610. The great Chief Justice there pointed out certain circumstances under which the existence of an unacknowledged government could be proved as a matter of fact. He pointed out that persons acting under the authority of such unacknowledged government could prove this to justify their acts of war. In the following year similar views were expressed by Judge JOHNSON on Circuit, in the matter of *Consul of Spain v. La Conception,* Fed. Cases 3137. He said that courts exercising jurisdiction of international law "were often called upon to deduce the fact of national independence from history, evidence or public notoriety where there has been no formal recognition."

Similar views were expressed at about this time by Lord Chief Justice BEST of England in *Yrissari v. Clem-*

ent, 3 Bing. 432. He called attention to the existence of sovereign states not acknowledged by any government, as Japan and Siam, and stated that the existence of such states must be proved by evidence.

After the Civil War this Court decided in a large number of cases that for many purposes the Confederate States must be admitted to have possessed governmental powers, and that to a certain extent the acts of such state government would be deemed valid. See *Texas v. White*, 7 Wallace 700; *Thorington v. Smith*, 8 Wallace 1; *United States v. Insurance Companies*, 22 Wallace 99; *Williams v. Bruffy*, 96 U. S. 176; *Baldy v. Hunter*, 171 U. S. 388.

In *MacLeod v. United States*, 229 U. S. 416, this Court held the insurgent Philippine government to be for the purposes of that case such a *de facto* government that custom duties paid to it would bar a collection by the United States government thereafter of the same duties.

There has been no more recent expression of opinion by this Court on the subject, but in recent years the Court of Appeals of the State of New York has had occasion to review the earlier cases and express certain views arising directly out of the situation existing in Russia.

It was held for instance in *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 234 N. Y. 372, that no suit could be maintained against an unrecognized government. The Court in that case had no difficulty in considering the fact that there was a government in Russia. The Court pointed out that whether or not a government existed within a given territory was a fact and not a

theory, and that such government was not created by recognition. That whether or not there was a government in existence was a question to be determined by the known facts and was not dependent upon recognition was further held by the same Court in *Nankivel v. Omsk All Russian Government,* 237 N. Y. 150.

Chief Judge CARDOZO in *Sokoloff v. National City Bank,* 239 N. Y. 158, stated that for certain purposes even the decrees of an unrecognized government might be given effect. He said:

> "Juridically, a government that is unrecognized may be viewed as no government at all, if the power withholding recognition chooses thus to view it. In practice, however, since juridical conceptions are seldom, if ever carried to the limit of their logic, the equivalence is not absolute, but is subject to self-imposed limitations of common sense and fairness, as we learned in litigations following our Civil War."

The subject was further considered in *Russian Reinsurance Company v. Stoddard,* 240 N. Y. 149; *Joint Stock Company of Volgakama and Chemical Factory v. National City Bank,* 240 N. Y. 368 and in *Petrogradsky Bank v. National City Bank,* 253 N. Y. 23. In all these cases the Court found no difficulty in discussing the existence of a government in Russia and did not deem such discussion precluded by the non-recognition on the part of the United States government.

Some of these authorities were reviewed by Judge GODDARD in the District Court of the United States for the Southern District of New York in the very interesting case which arose out of the shipment to the United States of gold belonging to the State Bank of the Soviet

Republic. The Bank of France sought to recover this gold as belonging to it. Certain defenses were interposed by the American banks into whose possession the gold had come, some of which relied on the acts of the Soviet government. Most of these defenses were held valid in *Banque de France v. Equitable Trust Company,* 33 Fed. (2d) 202. Judge GODDARD pointed out that our own government recognized that as a matter of fact a government existed in Russia, instancing the requirement in naturalization proceedings that an applicant for citizenship forswear allegiance to "the present government of Russia."

Indeed the Court of Claims itself in an earlier case seems not to have been troubled by the question upon which it decided the case at bar. In *Rossia Insurance Company v. The United States,* 58 Court of Claims 180 (1923), an attempt was made on the part of the petitioner in that case to show that the reciprocal right to sue the Russian government was granted to citizens of the United States by the Kerensky government, the last government recognized by the United States. The petitioner in that case wrongfully assumed that under the laws of the Soviet government there was no such reciprocity and sought to take advantage of the presumption that in the absence of recognition of a new government the old will be deemed to continue. The Court, however, held that such presumption was overcome by the notorious fact that the Soviet government had displaced the Kerensky government. The Court said that the question depended "upon the ascertainment of an existing and easily provable fact." That language would seem to be entirely applicable to the case at bar. The situation is exactly the same as in the Rossia Insurance case, except that the

petitioner in this case believes that it can establish the necessary reciprocity whereas the petitioner in the Rossia case felt unable to do so.

Practically all of the writers who have had occasion to discuss this subject have come to the same conclusion, namely, that in admitting the existence of a government for the purpose of determining private rights, the prerogative of the State Department is in no way infringed. It is only when the case deals with sovereignty itself and the effects flowing from an act of sovereignty that recognition becomes important. Even then, as some of the cases cited indicate, principles of justice may require giving effect to the acts of an unrecognized government to a limited extent.

Hervey, *Legal Effects of Recognition in International Law,* (1929);

Dickinson, *The Unrecognized Government or State in English and American Law,* 22 Mich. L. R. 29;

Fraenkel, *The Juristic Status of Foreign States, etc.,* 25 Col. L. R. 544;

Connick, *The Effect of Soviet Decrees in American Courts,* 34 Yale, L. J. 499;

Houghton, *The Validity of The Acts of Unrecognized Governments, etc.,* 13 Minn. L. R. 216;

35 Harvard, L. R. 607, 768; 37 Id. 606; 38 Id. 816, 832; 39 Id. 127; 41 Id. 102; 35 Yale L. J. 98, 150, at 155; 30 Col. L. R. 226.

It is also submitted that none of the cases cited by the Court of Claims in its opinion have any application to the

situation here presented. Chief reliance is placed upon the case of *Kennett v. Chambers*, 14 Howard 38. That case presented the question of a revolting community. It is obvious that until either the parent state or the home government has recognized the independence of the revolting community, the Courts cannot for any purpose recognize its independence. To do so would obviously embarrass the foreign relations of the home government. It would be absurd, however, to argue that such revolting community had no government at all and the case relied on by the Court of Claims did not pretend to decide this. It merely held that a contract for the purpose of assisting an insurrection in Texas was invalid because at the time it was made the independence of Texas had not been recognized. In other words, such contract was a violation of the neutrality of the United States.

Of the other cases cited by the Court of Claims it may be pointed out that the *United States v. Palmer*, 3 Wheaton 610, already discussed, also deals only with the question of neutrality. The same is true of *The Nueva Anna*, 6 Wheaton 193. *Jones v. United States*, 137 U. S. 202, actually has nothing to do with the subject of unrecognized governments. The only question in this case was whether a certain territory was within the United States or not. The Court held that it was bound by a declaration of the executive that such territory was within the United States. *Matter of Penza*, 277 Fed. 91, dealt only with the right of a representative of the Soviet government to recover possession of vessels. The Court held that no representative of the Soviet government could be

considered as having Ambassadorial powers, the State Department not having recognized such government. The Court did not intend to say that there was no government in Russia.

The various quotations from all these cases contained in the opinion of the Court of Claims, of course, lay down sound rules. They all deal, however, with the general question as to when the sovereign existence of a government will be admitted by the Court.

But none of the cases has any application to the problem here presented, namely, can petitioner show the existence of a system of Courts and a set of laws of the state of which it is a citizen which allow suits by citizens of the United States against such government? To permit proof of these facts does not require a holding that the Soviet government is a sovereign government whose acts are binding as though the government had been recognized; it does not require any determination whatever as to the character of the Soviet government, except the holding obvious and notorious that there has existed in Russia since 1917 a regime actually functioning in the territory of that state, maintaining armies, carrying on war, passing laws which are obeyed by the people within the territory, maintaining courts, entering into treaties with foreign nations and generally performing all the acts of a government.

The Courts must always remain free to determine questions of fact as they arise. No theory of prerogative on the part of the executive can interfere with this supreme right of the Courts. It is, of course, true that in cases in-

volving sovereignty (which is a conception partly factual and partly political) policy requires that the political exigency of the situation be supreme over the facts. But where no question of sovereignty is involved, no political infringement can arise, and the Court is only concerned with private rights, then the facts must be supreme. Such facts petitioner in this case has been deprived of its right to show.

CONCLUSION.

It is respectfully submitted that the judgment in this case must be reversed.

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In the Supreme Court of the United States

OCTOBER TERM, 1929

RUSSIAN VOLUNTEER FLEET, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 35–38) has not yet been reported.

JURISDICTION

The judgment of the Court of Claims was entered on April 1, 1929. (R. 39.) The plaintiff made a motion for a new trial, which was overruled on November 4, 1929. (R. [illegible].) The petition for a writ of certiorari was filed on February 3, 1930. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

May a corporation, a citizen of the Union of Soviet Socialist Republics, the sovereignty of which has not been recognized by the United States, maintain an action against the United States in the Court of Claims to recover compensation for the value of property requisitioned under the provisions of the Act of June 15, 1917?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fifth Amendment to the Constitution provides, in part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Judicial Code, Section 145 (U. S. C., Title 28, Section 250), provides in part:

> SEC. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: * * *.

Judicial Code, Section 155 (U. S. C., Title 28, Section 261) provides:

> SEC. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction.

The Act of June 15, 1917, c. 29, 40 Stat. 182, 183, provides in part:

> Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

STATEMENT

The petitioner in January, 1917, acquired by assignment certain contracts for the construction of two steel cargo steamships, which contracts had previously been made between Norwegian citizens and the Standard Shipbuilding Corporation of New York. (R. 7–8.)

The United States Emergency Fleet Corporation, under authority delegated to it by the President pursuant to the provisions of the Act of June 15, 1917, c. 29, 40 Stat. 182, requisitioned these ships and the contracts therefor, and completed construction of the vessels (R. 10–13).

The Emergency Fleet Corporation, on March 5, 1920, fixed the compensation due petitioner on account of the requisitioning of the ships at $1,412,532.35, which sum included refund of certain progress payments made the shipbuilder. Payment of this sum was authorized to whomsoever the Department of State should designate as properly and legally entitled thereto, but payment was withheld pending advice from the Department of State as to how and to whom the money should be paid. (R. 14.)

The amended petition filed in the Court of Claims alleges that petitioner is a corporation duly organized under the laws of Russia. (R. 7.) Petitioner alleged and offered to prove that a citizen of the United States is accorded the right to prosecute claims against the Union of Soviet Socialist Republics in its courts. (R. 15, 35.)

The court below dismissed the petitioner's amended petition on the motion of the United States.

ARGUMENT

The Court of Claims held that the right of the petitioner to sue in that court was governed by Section 155 of the Judicial Code (p. 3, *supra*) and that, as the United States had not recognized the Union of Soviet Socialist Republics, the petitioner was not a citizen—

> of any *government* which accords to citizens of the United States the right to prosecute claims against such government in its courts

within the meaning of Section 155. (R. 35–38.) We are of the opinion that it is doubtful whether the provisions in the Act of June 15, 1917 (p. 3, *supra*), which give the person entitled to compensation for the requisition of property the right to sue in the Court of Claims, are subject to the provisions of Section 155. This Court has construed a somewhat similar statute, the Act of July 1, 1918, c. 114, 40 Stat. 704, as being independent of the provisions of Section 3447, R. S., which prohibits suits against the Government by an assignee of a patent for prior infringement. *Richmond Screw Anchor Co.* v. *United States*, 275 U. S. 331.

Moreover, the Court of Claims gave no consideration to the constitutional question which the petitioner raises and which may be entitled to consideration under the principle that a statute should be construed in such a way as to avoid serious doubt of

its constitutionality. Petitioner argued that the guarantee of the Fifth Amendment that private property shall not be taken for public use without payment of just compensation therefor applies to an alien like the petitioner. Although the petitioner has been awarded compensation by the delegate of the President in accordance with the provisions of the Act of June 15, 1917, the holding of the Court of Claims operates to deprive petitioner of any judicial determination of just compensation. Some support for the proposition that there must be provision for judicial determination of just compensation is to be found in *United States* v. *New River Collieries*, 262 U. S. 341, 343–344; *Davis* v. *Newton Coal Co.*, 267 U. S. 292, 301; and *Monongahela Navigation Co.* v *United States*, 148 U. S. 312, 327. The statement in *Bauman* v. *Ross*, 167 U. S. 548, 593, that the estimate of just compensation for property taken for the public use "may be entrusted by Congress to commissioners appointed by a court or *by the executive*" supports the contention to the contrary.

CONCLUSION

Although there is no square conflict of authority on the particular points involved, there is support in analogous cases in this Court for two of the points made by the petitioner. As far as we can ascertain, there is but one other case pending in which these particular points are likely to be raised, and consequently we do not feel that the instant case is one of general importance. Nevertheless, the case raises

the question of the constitutional rights of an alien in a substantial matter, and the United States does not oppose the issuance of the writ.

Respectfully submitted.

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APRIL, 1930.

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No. 39

In the Supreme Court of the United States

OCTOBER TERM, 1930

RUSSIAN VOLUNTEER FLEET, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 39

RUSSIAN VOLUNTEER FLEET, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 35–38) is reported in 68 C. Cls. 32.

JURISDICTION

The judgment of the Court of Claims was entered on April 1, 1929. (R. 39.) The plaintiff made a motion for a new trial, which was overruled on November 4, 1929. (R. 39.) The petition for a writ of certiorari was filed on February 3, 1930 (R. 39), and was granted April 21, 1930 (R. 41). The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

May a corporation which alleges that it is "a corporation duly organized under and by virtue of the Laws of Russia" maintain an action against the United States in the Court of Claims to recover compensation for the value of property requisitioned under the provisions of the Act of June 15, 1917, c. 29, 40 Stat. 182, 183?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

These are printed in Appendix A, pp. 15–16, *infra*.

STATEMENT

The petitioner filed an amended petition in the Court of Claims alleging that it "is a corporation duly organized under, and by virtue of, the Laws of Russia." (R. 7.) That petition also makes the following averments:

The petitioner in January, 1917, acquired by assignment certain contracts for the construction of two steel cargo steamships, which contracts had previously been made between Norwegian citizens and the Standard Shipbuilding Corporation of New York. (R. 7–8.)

The United States Emergency Fleet Corporation, under authority delegated to it by the President pursuant to the provisions of the Act of June 15, 1917, c. 29, 40 Stat. 182, requisitioned these ships and the contracts therefor, and completed construction of the vessels. (R. 10–13.)

The Emergency Fleet Corporation, on March 5, 1920, fixed the compensation due petitioner on ac-

count of the requisitioning of the ships at $1,412,-532.35, which sum included refund of certain progress payments made the shipbuilder. Payment of this sum was authorized to whomsoever the Department of State should designate as properly and legally entitled thereto, but payment was withheld pending advice from the Department of State as to how and to whom the money should be paid. (R. 14.)

Paragraph 13 of the petition alleges (R. 15):

> Citizens of the United States are and at the time of and since the commencement of this suit have been accorded the right to prosecute claims against the Russian Government in the Court of that Government.

The plaintiff served notice that it proposed to take the evidence of certain witnesses. (R. 34.) The defendant moved to quash the plaintiff's notice of its intention to take this testimony upon the ground that the court below was "without jurisdiction of the subject matter of this proceeding." (R. 34–35.)

After argument the Court of Claims thereupon dismissed the petition. (R. 38.) The opinion of the court below averred (R. 35):

> It is stated in plaintiff's brief:
>
> "The plaintiff in this case is a corporation and citizen of the Union of Soviet Socialist Republics. The plaintiff has alleged and now offers to prove that a citizen of the United States is or was accorded the right to prosecute claims against the said Russian

> Soviet Government in its courts or against the Kerensky government in the courts of that government."

The court held that the suit was subject to the provisions of Section 155 of the Judicial Code (pp. 15–16, *infra*). It took judicial notice of the fact that this Government has not recognized the Union of Soviet Socialist Republics and that, consequently, a citizen thereof was not a citizen "of any government" within the meaning of Section 155.

A letter from the Secretary of State to the Attorney General, which is copied as Appendix B (p. 17, *infra*), shows that the Provisional Government of Russia, the successor of the Imperial Government of Russia, was recognized by the Government of the United States on March 22, 1917, and that according to the information of the Department of State the Provisional Government of Russia was overthrown by an armed uprising in November, 1917. The Government of the United States has not extended recognition to any régime established in Russia subsequent to the overthrow of the Provisional Government.

SUMMARY OF ARGUMENT

The Government submits the case to the Court on the opinion of the Court of Claims. Although we do not confess error, we are of the opinion that Section 155 of the Judicial Code is not applicable to this suit, which was brought in accordance with the provisions of the Act of June 15, 1917, to recover compensation for the requisition of property by

the United States. This Act does not mention Section 155, and we think it doubtful whether Congress intended to make the right to sue dependent upon the conditions set forth in Section 155. A case involving other statutes relating to suits in the Court of Claims supports the contention that Section 155 is not applicable. *Richmond Screw Anchor Co.* v. *United States,* 275 U. S. 331.

Moreover, there would seem to be grave doubt as to the constitutionality of the Act of June 15, 1917, as construed by the Court of Claims. The protection of the Fifth Amendment has been held by this Court to extend to aliens. And we believe there would be grave doubt as to the constitutionality of a statute which provided for the taking of private property of aliens without providing for determination of just compensation under supervision of some court, even in the case of nationals whose government does not permit the prosecution of such claim against itself. If this is so, such a construction of the statute should be avoided if its language will permit.

If Section 155 of the Judicial Code is applicable, we submit that the decision of the Court of Claims was correct. This Government has not recognized any régime which has been functioning as a government in Russia since 1917. We contend that it follows that if the petitioner is a citizen of Russia, it is not a citizen "of any government" within the meaning of Section 155, and that the courts in this country can not find that judicial remedies against the Russian government exist in Russia.

A further question may be suggested, and that is whether a corporation which purports to be a citizen of "the Union of Soviet Socialist Republics" has such a legal existence as to bring suit in any court. But we are of the opinion that this question is not now before this Court. The petition filed in the Court of Claims describes the petitioner as a corporation "duly organized under, and by virtue of, the Laws of Russia." As the record avers facts showing that it was in existence under the régime of the Imperial Russian Government, it can not be assumed without proof that it now has no corporate existence. A recent well-considered case held that such a corporation may bring suits in courts in this country. *Petrogradsky M. K. Bank* v. *National City Bank,* 253 N. Y. 23. The mere statement that the petitioner is a citizen of "the Union of Soviet Socialist Republics," in its brief, which is not a part of the record, would hardly seem to be sufficient ground for dismissing the case. Whether any corporation created by this so-called Republic can sue is a question which requires more information about the subject than can be obtained either from the instant record or judicial notice of political acts. Similarly, the question whether the instant suit is being prosecuted by persons having proper authority from the corporation, alleged to be entitled to compensation, is a matter which can not be determined at the present time.

ARGUMENT

I

IS THE SUIT OF THE PETITIONER SUBJECT TO THE PROVISIONS OF SECTION 155 OF THE JUDICIAL CODE?

The petitioner in the Court of Claims sought compensation for the requisition of a contract under the Act of June 15, 1917, (p. 16, *infra*), which provides that whenever the United States shall requisition any contract it shall—

> make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

Section 24, paragraph 20, has no application to the instant case. Section 145 of the Judicial Code (p. 15, (*infra*) is the one giving the Court of Claims its general jurisdiction over claims against the United States.

Neither the Act of June 15, 1917, nor Section 145 of the Judicial Code contains any express ref-

erence to Section 155 of the Judicial Code (pp. 15–16, *infra*). That section provides:

> Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction.

This section of the Judicial Code, as pointed out on pages 21–22 of the brief for the petitioner, was not a part of the original Act establishing the Court of Claims. It had its origin in the Act of July 27, 1868, c. 276, 15 Stat. 243.

The legislative history of the Act of June 15, 1917, throws no light upon the question whether Congress intended to make its provisions subject to Section 155 of the Judicial Code.

Richmond Screw Anchor Co. v. *United States*, 275 U. S. 331, construed a somewhat similar statute (the Act of July 1, 1918, c. 114, 40 Stat. 704), which gave jurisdiction to the Court of Claims in cases arising out of the unlicensed use or manufacture of patented articles by the United States. It held that the rights there given were not subject to the provisions of Section 3447 R. S., which prohibits suit against the Government by an assignee of a patent for prior infringement. There is a strong analogy between that case and the instant case.

The Act of June 15, 1917, may therefore be construed as not incorporating the limitations of Section 155 of the Judicial Code, and we are of the opinion that it should be so construed, in view of the fact that the construction of the Act of June 15, 1917, adopted by the Court of Claims, raises grave doubts as to its constitutionality. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 408; *United States* v. *Standard Brewery*, 251 U. S. 210, 220; *Phelps* v. *United States*, 274 U. S. 341; *Richmond Screw Anchor Co.* v. *United States*, 275 U. S. 331, 344.

The provisions of the Fifth Amendment in regard to just compensation have often been said to require judicial determination. *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 327; *Seaboard Air Line Ry.* v. *United States*, 261 U. S. 299, 304; *United States* v. *New River Collieries Co.*, 262 U. S. 341, 343, 344; *Davis* v. *Newton Coal Co.*, 267 U. S. 292, 301. In *Bauman* v. *Ross*, 167 U. S. 548, 593, the Court said that the estimate of just compensation for property taken for public use "may be entrusted by Congress to commissioners appointed by a court or *by the executive.*" (Italics ours.) But this language was not necessary for the decision of the case and seems to be contrary to the later opinions just cited. If section 155 limits the right to pursue the judicial remedies granted by the Act of June 15, 1917, that Act would seem to be unconstitutional under these authorities.

It is well settled that the protection of the Fifth Amendment (p. 15, *infra*) extends to aliens. See *Wong Wing* v. *United States*, 163 U. S. 228, 238; *Li Sing* v. *United States*, 180 U. S. 486, 495. See also *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369, and *Truax* v. *Raich*, 239 U. S. 33, relating to the applicability of the Fourteenth Amendment to aliens. We know of no case raising the question as to whether protection of the Amendment extends to aliens who profess to be subjects of unrecognized governments, but it appears that the Russian Volunteer Fleet existed as a corporation under the Imperial Government and that its property was seized during the sway of the provisional government which the United States recognized (p. 17, *infra*). Unless the existence of such a corporation has ended because of revolution and exhibitions of power of the so-called "Soviet Republics" or has no life except by virtue of their decrees it can hardly be contended that this corporation was not entitled to the protection of the Fifth Amendment. But upon these questions the record is silent.

II

IF THE PETITIONER'S RIGHTS ARE SUBJECT TO THE PROVISIONS OF SECTION 155 OF THE JUDICIAL CODE, WE SUBMIT THAT THE DECISION OF THE COURT OF CLAIMS WAS CORRECT

The Provisional Government of Russia was recognized by the United States on March 22, 1917, and the Provisional Government of Russia was

the last government of Russia recognized by the United States. (*Infra*, p. 17.)

If the petitioner's rights are subject to Section 155 of the Judicial Code (*infra*, pp. 15–16), then the petitioner can sue only if it is a citizen or subject "of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts." If the petitioner claims to be a citizen or subject of the last government of Russia which was recognized by the United States, then it can not show that that government now allows citizens of the United States to prosecute claims against it in its courts, for it is a fact of general knowledge, of which this Court may take judicial notice, that the courts of the last government of Russia which we recognized are no longer functioning. If on the other hand the petitioner acknowledges allegiance to and is a citizen of the present régime in Russia which has not been recognized by the United States, our courts can not say that it is a citizen of a government which allows our citizens to prosecute claims against it in its courts within the meaning of Section 155 because one of the attributes of a court is the sanction and authority of government and any such determination would conflict with the determination of the executive to withold recognition of the present régime in Russia.

In support of its contention to the contrary, the petitioner cites *Texas* v. *White*, 7 Wall. 700, *Thorington* v. *Smith*, 8 Wall. 1; *United States* v.

Insurance Companies, 22 Wall. 99; *Williams* v. *Bruffy*, 96 U. S. 176; *Baldy* v. *Hunter*, 171 U. S. 388.

III

OTHER POSSIBLE QUESTIONS INVOLVED

We have considered the possible argument that a corporation which is a creature of the so-called "Soviet Republics" has no such legal existence as to enable it to sue in any court in this country, but have come to the conclusion that this contention can not be made upon the present state of the record.

Nothing in the petition itself shows that the petitioner is a creature of the so-called "Soviet Republics." The only allegation in the petition as to its status is that it is "a corporation duly organized under, and by virtue of, the Laws of Russia." (R. 7.) The petition also shows that it existed under the Imperial Government of Russia and that the property was seized from it during the sway of the Provisional Government. The Court of Appeals of New York has held, in a well-considered opinion, that such a corporation has a legal existence and can sue in the courts of that State. *Petrogradsky M. K. Bank* v. *National City Bank*, 253 N. Y. 23. It has been held that a suit may be maintained on behalf of the "State of Russia" although the United States has recognized no government in Russia since the Kerensky Government and that government has been overthrown. *Lehigh Valley R. Co.* v. *State of Russia*, 21 F. (2d) ~~406~~ 396 (C. C.

A. 2d), certiorari denied, 275 U. S. 571. And the United States recently brought a suit against the Russian Volunteer Fleet in a Federal District Court. No question seems to have been raised by the court as to the possibility of suing that corporation. *United States* v. *Russian Volunteer Fleet,* 22 F. (2d) 187.

Inasmuch as the proceedings in the Court of Claims did not reach a point where any findings of fact were made, it can not be assumed, on the present record, that the petitioner has no corporate existence.

The only indication in the record to the contrary is the quotation from the petitioner's brief in the opinion of the Court of Claims. (R. 35; pp. 3–4, *supra.*) Even if this Court should feel that this can be considered as qualifying or explaining the allegation in the petition, it is inconclusive.

After the reception of evidence the Court of Claims may find that the corporate existence of the plaintiff can not be recognized in our courts or that the suit is prosecuted by persons having no authority to represent the Russian Volunteer Fleet which can be accepted in our courts, but we do not think that these questions can be determined on the allegations of the petition alone.

In taking the position which we have indicated in this brief, we wish to make it clear that we are not conceding that the suit in the Court of Claims should succeed or that it will be necessary for that court to go into the question of compensation due

on account of the requisitioning of the contracts and ships involved.

CONCLUSION

Although we do not confess error, we are unable to support the construction of the Act of June 15, 1917, upon the basis of which the Court of Claims dismissed the case. If our view is correct, it would follow that the judgment below should be reversed, but we submit that the Government should have an opportunity to raise by proper motions or answer all questions relating to the right of the petitioner to bring suit and the right of the persons in charge of the case to proceed with its prosecution.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
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Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
PERCY M. COX,
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GREEN H. HACKWORTH,
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FRANCIS M. ANDERSON,
Assistant Solicitor,
Department of State,
Of Counsel.

DECEMBER, 1930.

APPENDIX A

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fifth Amendment to the Constitution, provides, in part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Judicial Code, Section 145 (U. S. C., Title 28, Section 250), provides in part:

> SEC. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: * * *.

Judicial Code, Section 155 (U. S. C., Title 28, Section 261), provides:

> SEC. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in

its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction.

The Act of June 15, 1917, c. 29, 40 Stat. 182, 183, provides in part:

> Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

APPENDIX B

DEPARTMENT OF STATE,
Washington, December 5, 1930.

In reply refer to EE 861.01.

The Honorable The ATTORNEY GENERAL.

SIR: I have the honor to inform you, in response to a request made by Mr. Claude R. Branch, that the Provisional Government of Russia, the successor of the Imperial Government of Russia, was recognized by the Government of the United States on March 22, 1917. The Provisional Government of Russia was the last Government of Russia recognized by the Government of the United States.

According to the Department's information, the Provisional Government of Russia was overthrown by an armed uprising which took place in the early part of November, 1917. The Government of the United States has not extended recognition to any régime established in Russia subsequent to the overthrow of the Provisional Government.

Very truly yours,

(Sgd.) HENRY L. STIMSON.

U. S. GOVERNMENT PRINTING OFFICE: 1930

SUPREME COURT OF THE UNITED STATES.

No. 39.—October Term, 1930.

Russian Volunteer Fleet, Petitioner, *vs.* The United States. } On Writ of Certiorari to the Court of Claims.

[February 25, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The petitioner brought this suit against the United States in the Court of Claims to recover just compensation for the requisitioning by the United States Shipping Board Emergency Fleet Corporation, under authority delegated to it by the President, of contracts for the construction of two vessels. The Court of Claims dismissed the petition for the want of jurisdiction. (68 C. Cls. 32.) This Court granted a writ of certiorari. 281 U. S. 711.

The petition, filed in October, 1924, alleged that the petitioner "is a corporation duly organized under, and by virtue of, the Laws of Russia"; that in January, 1917, the petitioner became the assignee for value of certain contracts for the construction of two vessels by the Standard Shipbuilding Corporation of New York; that in August, 1917, the United States Shipping Board Emergency Fleet Corporation, acting under the authority conferred by the Act of June 15, 1917 (c. 29, 40 Stat. 183) and by the Executive Order of the President of the United States made on July 11, 1917, requisitioned these contracts, and the vessels being constructed thereunder, for the use of the United States; that the United States thereby became liable to the petitioner for the payment of just compensation; that in August, 1919, the petitioner submitted its affidavit of claim, and vouchers in support; that in March, 1920, the United States Shipping Board Emergency Fleet Corporation fixed the just compensation of the petitioner at a total amount of $1,412,532.35; that the value of the contracts taken from the petitioner was $4,000,000, to which the petitioner was entitled after allowing all proper credits and offsets; and that "citizens of the United

States are and at the time of and since the commencement of this suit have been accorded the right to prosecute claims against the Russian Government in the Court of that Government."

In May, 1927, the petitioner filed motions to issue commissions to take testimony in Germany and France; the defendant objected, and the motions were overruled. The petitioner then gave notice of the taking of testimony in Washington, D. C., whereupon the defendant moved to quash the notice upon the ground that the Court was without jurisdiction of the subject matter of the proceeding. On the submission of that motion, the petition was dismissed. The Court of Claims held that, as the United States Government had not recognized the Union of Soviet Socialist Republics in Russia, the petitioner was not entitled to maintain its suit in view of section 155 of the Judicial Code (U. S. C., Tit. 28, sec. 261). That section is as follows: "Sec. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction." The Court said that the reference to citizens or subjects of "any government" meant such governments as were recognized by the proper authorities of the United States.

The Government in its argument here, while submitting the case on the opinion of the Court of Claims and not confessing error, presents the view that section 155 of the Judicial Code does not apply to this suit which was brought under the provisions of the Act of June 15, 1917. With respect to the matter of recognition, the Government appends to its brief a letter of the Secretary of State of the United States, under date of December 5, 1930, stating that "the Provisional Government of Russia, the successor of the Imperial Government of Russia, was recognized by the Government of the United States on March 22, 1917"; that, "according to the Department's information, the Provisional Government of Russia was overthrown by an armed uprising which took place in the early part of November, 1917", and that "the Government of the United States has not extended recognition to any régime established in Russia subsequent to the overthrow of the Provisional Government."

As the facts alleged in the petition were admitted by the motion to dismiss, the allegation that the petitioner is a corporation duly organized under the laws of Russia stands unchallenged on the record. There was no legislation which prevented it from acquiring and holding the property in question. The petitioner was an alien friend, and as such was entitled to the protection of the Fifth Amendment of the Federal Constitution. *Wong Wing* v. *United States*, 163 U. S. 228, 238; compare *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369; *Santa Clara County* v. *Southern Pacific Railroad Company*, 118 U. S. 394, 396; *Truax* v. *Raich*, 239 U. S. 39; *Terrace* v. *Thompson*, 263 U. S. 197, 216; *Home Insurance Company* v. *Dick*, 281 U. S. 397, 411. Exerting by its authorized agent the power of eminent domain in taking the petitioner's property, the United States became bound to pay just compensation. *United States* v. *Great Falls Manufacturing Company*, 112 U. S. 645, 656; *United States* v. *North American Company*, 253 U. S. 330, 333; *Campbell* v. *United States*, 266 U. S. 368, 370, 371; *Phelps* v. *United States*, 274 U. S. 341, 343, 344; *International Paper Company* v. *United States* (decided January 19, 1931), 282 U. S. —. And this obligation was to pay to the petitioner the equivalent of the full value of the property contemporaneously with the taking. *Phelps* v. *United States, supra; Brooks-Scanlon Corporation* v. *United States*, 265 U. S. 106, 123.

The Congress recognized this duty in authorizing the expropriation. The Act of June 15, 1917, under which the requisition was made, provided for the payment of just compensation. The Congress did not attempt to give to any officer or administrative tribunal the final authority to determine the amount of such compensation[1], and recovery by suit against the United States was made an integral part of the legislative plan of fulfilling the constitutional requirement. The Act provided as follows: "Whenever the United States shall . . . requisition any contract, . . . requisi-

[1]See United States *v.* Jones, 109 U. S. 513, 519; Monongahela Navigation Co. *v.* United States, 148 U. S. 312, 327; Long Island Water Supply Co. *v.* Brooklyn, 166 U. S. 685, 695; Backus *v.* Fort Street Union Depot Co., 169 U. S. 557, 559; United States *v.* Babcock, 250 U. S. 328, 331; Bragg *v.* Weaver, 251 U. S. 57, 59; Seaboard Air Line Railway Co. *v.* United States, 261 U. S. 299, 304; North Laramie Land Co. *v.* Hoffman, 268 U. S. 276, 285, 286; Great Northern Railway Co. *v.* United States, 277 U. S. 172, 182; Dohany *v.* Rogers, 281 U. S. 362, 369.

tion, acquire or take over . . . any ship, . . . in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code." Section 24, paragraph 20, of the Judicial Code (U. S. C., Tit. 28, sec. 41, subd. (20)), gives jurisdiction to the District Courts of the United States, concurrent with the Court of Claims, of claims against the United States not exceeding $10,000, founded upon the Constitution, or any law of Congress, or upon any contract, express or implied, with the Government of the United States, when the claimant would be entitled to redress against the United States in a court of law, equity, or admiralty, if the United States were suable. The case of an alien friend is not excepted. Section 145 of the Judicial Code (U. S. C., Tit. 28, sec. 250) gives to the Court of Claims jurisdiction of suits on similar claims against the United States without limit of amount. The authority conferred upon the President by the Act of June 15, 1917, was exercised by him through the United States Shipping Board Emergency Fleet Corporation, and as the compensation fixed by that Corporation was not satisfactory to the petitioner, it became entitled under the express terms of the Act to bring suit against the United States to recover the amount justly payable by reason of the requisition.

The Act of June 15, 1917, makes no reference to section 155 of the Judicial Code with respect to alien suitors, and the question is whether that provision should be implied as establishing a condition precedent and the recovery thus be defeated. It is at once apparent that such an implication would lead to anomalous results. It would mean that, although the United States had actually taken possession of the property and was enjoying the advantages of its use, and the alien owner was unquestionably entitled to compensation at the time of the taking, it was the intention of the Congress that recovery should be denied, or at least be indefinitely postponed

until the Congress made some other provision for the determination of the amount payable, if it appeared that citizens of the United States were not entitled to prosecute claims against the government of the alien's country in its courts, or that the United States did not recognize the régime which was functioning in that country.

We find no warrant for imputing to the Congress such an intention. "Acts of Congress are to be construed and applied in harmony with and not to thwart the purpose of the Constitution". *Phelps* v. *United States, supra.* The Fifth Amendment gives to each owner of property his individual right. The constitutional right of owner A to compensation when his property is taken is irrespective of what may be done somewhere else with the property of owner B. As alien friends are embraced within the terms of the Fifth Amendment, it cannot be said that their property is subject to confiscation here because the property of our citizens may be confiscated in the alien's country. The provision that private property shall not be taken for public use without just compensation establishes a standard for our Government which the Constitution does not make dependent upon the standards of other Governments. The Act of Congress should be interpreted in the light of its manifest purpose to give effect to the constitutional guaranty.

Nor do we regard it as an admissible construction of the Act of June 15, 1917, to hold that the Congress intended that the right of an alien friend to recover just compensation should be defeated or postponed because of the lack of recognition by the Government of the United States of the régime in his country. *A fortiori*, as the right to compensation for which the Act provided sprang into existence at the time of the taking, there is no ground for saying that the statute was not to apply, if at a later date, and before compensation was actually made, there should be a revolution in the country of the owner and the ensuing régime should not be recognized. The question as presented here is not one of a claim advanced by or on behalf of a foreign government or régime, but is simply one of compensating an owner of property taken by the United States.

The Act of June 15, 1917, if read according to its terms, presents no difficulty. A condition should not be implied which, to say the least, would raise a grave question as to the constitutional validity

of the Act. *Federal Trade Commission* v. *American Tobacco Company*, 264 U. S. 298, 307; *Missouri Pacific Railroad Company* v. *Boone*, 270 U. S. 466, 471, 472; *Blodgett* v. *Holden*, 275 U. S. 142, 148; *Richmond Screw Anchor Company* v. *United States*, 275 U. S. 331, 346; *Lucas* v. *Alexander*, 279 U. S. 573, 577.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.